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With regard to agendas, there is one posted for the July 15 call at:

[http://yosemite.epa.gov/sab/sabproduct.nsf/165F936E2001C2C485257DFD00602CFB/\\$File/July+15+2015+Telec+Agenda+aw\\_revised.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/165F936E2001C2C485257DFD00602CFB/$File/July+15+2015+Telec+Agenda+aw_revised.pdf)

Also meeting minutes from that call:

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*Excerpt on discounting (at 7% per A4) from SCC Response to Comments:*

“(1) It would be appropriate to include a 7 percent discount rate in the range used to estimate the SCC.

....

*Response*

OMB guidance in Circular A-4 recommends that discount rates of 3 percent and 7 percent be used in regulatory impact analysis. The 7 percent rate is an estimate of the average before-tax real rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business and corporate capital and is meant to approximate the opportunity cost of capital in the United States. The 3 percent rate is an estimate of the real rate at which consumers discount future consumption flows to their present value, often referred to as the social rate of time preference or the consumption rate of interest. As stated in the 2010 TSD, in a market with no distortions, the return to savings would equal the private return on investment, and the market rate of interest would be the appropriate choice for the social discount rate. In the real world, however, risk, taxes, and other market imperfections drive a wedge between the risk-free rate of return on capital and the consumption rate of interest.

While most regulatory impact analysis is conducted over a time frame in the range of 20 to 50 years, OMB guidance in Circular A-4 recognizes that special ethical considerations arise when comparing benefits and costs across generations. Although most people demonstrate time preference in their own consumption behavior, it may not be appropriate for society to demonstrate a similar preference when deciding between the well-being of current and future generations. Future citizens who are affected by such choices cannot take part in making them, and today's society must act with some consideration of their interest. Even in an intergenerational context, however, it would still be correct to discount future costs and benefits generally (though perhaps at a lower rate than for intragenerational analysis), due to the expectation that future generations will be wealthier and thus will value a marginal dollar of benefits or costs less than the current generation. Therefore, it is appropriate to discount future benefits and costs relative to current benefits and costs, even if the welfare of future generations is not being discounted. Estimates of the discount rate appropriate in this case, from the 1990s, ranged from 1 to 3 percent. After reviewing those considerations, Circular A-4 states that if a rule will have important intergenerational benefits or costs, agencies should consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.

The IWG examined the economics literature and concluded that the consumption rate of interest is the correct concept to use in evaluating the net social costs of a marginal change in CO<sub>2</sub> emissions, as the impacts of climate change are measured in consumption-equivalent units in the three IAMs used to estimate the SCC. This is consistent with OMB guidance in Circular A-4, which states that when a regulation is expected to primarily affect private consumption—for instance, via higher prices for goods and services—it is appropriate to use the consumption rate of interest to reflect how private individuals trade-off current and future consumption.

As explained in the 2010 TSD, after a thorough review of the discounting literature, the IWG chose to use three discount rates to span a plausible range of constant discount rates: 2.5, 3, and 5 percent per year. The central value, 3 percent, is consistent with estimates provided in the economics literature and

Circular A-4 guidance for the consumption rate of interest. The upper value of 5 percent represents the possibility that climate damages are positively correlated with market returns, which would suggest a rate higher than the risk-free rate of 3 percent. Additionally, this discount rate may be justified by the high interest rates that many consumers use to smooth consumption across periods. The low value, 2.5 percent, is included to incorporate the concern that interest rates are highly uncertain over time. It represents the average rate after adjusting for uncertainty using a mean-reverting and random walk approach as described in Newell and Pizer (2003), starting at a discount rate of 3 percent. Further, a rate below the riskless rate would be justified if climate investments are negatively correlated with the overall market rate of return. Use of this lower value also responds to the ethical concerns discussed above regarding intergenerational discounting.

The IWG recognizes that disagreement remains in the academic literature over the appropriate discount rate to use for regulatory analysis of actions with significant intergenerational impacts, such as CO2 emissions changes that affect the global climate on long time scales. The IWG will continue to follow and evaluate the latest science on intergenerational discounting and seek external expert advice on issues related to discounting in the context of climate change.”

(<https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-response-to-comments-final-july-2015.pdf> , p. 21)

And in Process Related Comments Section (p. 36):

“Circular A-4 is a living document, which may be updated as appropriate to reflect new developments and unforeseen issues. OMB was fully involved in the development of the SCC estimates as a working group co-chair and supports the working group’s recommendations regarding the discount rate and the focus on global damages. The departure from the standard discount rate recommendations in Circular A-4 is explained in detail in the TSDs and in Section 5 of this document. Briefly, the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself. The emphasis on global rather than domestic damages is also explained in detail in the TSDs. Beyond the fact that good methodologies for estimating domestic damages do not currently exist, basing decisions on only the domestic damages from carbon emissions will lead to an inefficient allocation of resources to reducing them, especially if all countries adopt a similarly short-sighted approach. An efficient outcome can only be achieved if all countries consider the full costs and benefits of their actions; the United States continues to be a leader in working to establish such a regime internationally.”

## The Impact of Pollution on Worker Productivity<sup>†</sup>

By JOSHUA GRAFF ZIVIN AND MATTHEW NEIDELL\*

As one of the primary factors of production, labor is an essential element in every nation's economy. Investing in human capital is widely viewed as a key to sustaining increases in labor productivity and economic growth. While health is increasingly seen as an important part of human capital, environmental protection, which typically promotes health, has not been viewed through this lens. Indeed, such interventions are typically cast as a tax on producers and consumers, and thus a drag on the labor market and the economy in general. Given the large body of evidence that causally links pollution with poor health outcomes (e.g., Bell et al. 2004; Chay and Greenstone 2003; Currie and Neidell 2005; Dockery et al. 1993; Pope et al. 2002), it seems plausible that efforts to reduce pollution could in fact also be viewed as an investment in human capital, and thus a tool for promoting, rather than retarding, economic growth.

The key to this assertion lies in the impacts of pollution on labor market outcomes. While a handful of studies have documented impacts of pollution on labor supply (Carson, Koundouri, and Nauges 2011; Graff Zivin and Neidell forthcoming; Hanna and Oliva 2011; Hausman, Ostro, and Wise 1984; Ostro 1983),<sup>‡</sup> their focus on the extensive margin, where behavioral responses are nonmarginal, only captures high-visibility labor market impacts. Pollution is also likely to have productivity impacts on the intensive margin, even in cases where labor supply remains unaffected. Since worker productivity is more difficult to monitor than labor supply, these more subtle impacts may be pervasive throughout the workplace, so that even small individual effects may translate into large welfare losses when aggregated across the economy. There is, however, no systematic evidence to date on the direct impact of pollution on worker productivity.<sup>§</sup> This paper is the first to rigorously assess this environmental productivity effect.

Estimation of this relationship is complicated for two reasons. One, although datasets frequently measure output per worker, these measures do not isolate worker

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<sup>†</sup> To view additional materials, visit the article page at <http://dx.doi.org/10.1257/aer.102.7.3652>.

<sup>‡</sup> Numerous cost-of-illness studies that focus on hospital outcomes such as length of hospital stay also implicitly focus on labor supply impacts.

<sup>§</sup> In a notable case study, Crocker and Horst (1981) examined the impacts of environmental conditions on 17 citrus harvesters. They found a small negative impact on productivity from rather substantial levels of pollution in Southern California in the early 1970s.

productivity from other inputs (i.e., capital and technology), so that obtaining clean measures of worker productivity is a perennial challenge. Two, exposure to pollution levels is typically endogenous. Since pollution is capitalized into housing prices (Chay and Greenstone 2005), individuals may sort into areas with better air quality depending, in part, on their income, which is a function of their productivity (Banzhaf and Walsh 2008). Furthermore, even if ambient pollution is exogenous, individuals may respond to ambient levels by reducing time spent outside, so that their exposure to pollution is endogenous (Neidell 2009).

In this paper, we use a unique panel dataset on the productivity of agricultural workers to overcome these challenges in analyzing the impact of ozone pollution on productivity. Our data on daily worker productivity is derived from an electronic payroll system used by a large farm in the Central Valley of California that pays its employees through piece rate contracts. A growing body of evidence suggests that piece rates reduce shirking and increase productivity over hourly wages and relative incentive schemes, particularly in agricultural settings (Bandiera, Barankay, and Rasul 2005, 2010; Lazear 2000; Paarsch and Shearar 1999, 2000; Shi 2010). Given the incentives under these contracts, our measures of productivity can be viewed as a reasonable proxy for productive capacity under typical work conditions.

We conduct our analysis at a daily level to exploit the plausibly exogenous daily fluctuations in ambient ozone concentrations. Although aggregate variation in environmental conditions is largely driven by economic activity, daily variation in ozone is likely to be exogenous. Ozone is not directly emitted but forms from complex interactions between nitrogen oxides ( $\text{NO}_x$ ) and volatile organic chemicals (VOCs), both of which are directly emitted, in the presence of heat and sunlight. Thus, ozone levels vary in part because of variations in temperature, but also because of the highly nonlinear relationship with  $\text{NO}_x$  and VOCs. For example, the ratio of  $\text{NO}_x$  to VOCs is almost as important as the level of each in affecting ozone levels (Auffhammer and Kellogg 2011), so that small *decreases* in  $\text{NO}_x$  can even lead to *increases* in ozone concentrations, which has become the leading explanation behind the “ozone weekend effect” (Blanchard and Tanenbaum 2003). Moreover, regional transport of  $\text{NO}_x$  from distant urban locations, such as Los Angeles and San Francisco, has a tremendous impact on ozone levels in the Central Valley (Sillman 1999). Given the limited local sources of ozone precursors, this suggests that the ozone formation process coupled with emissions from distant urban activities are the driving forces behind the daily variation in environmental conditions observed near this farm.

Furthermore, the labor supply of agricultural workers is highly inelastic in the short run. Workers arrive at the field in crews and return as crews, thus spending the majority of their day outside regardless of environmental conditions. Moreover, since we have measures of both the decision to work and the number of hours worked, we can test whether workers respond to ozone, and in fact we are able to rule out even small changes in avoidance behavior. Thus, focusing on agricultural workers greatly limits the scope for avoidance behavior, further ensuring that exposure to pollution is exogenous in this setting, and that we are detecting productivity impacts on the intensive margin.

Although these workers are paid through piece-rate contracts, worker compensation is subject to minimum wage rules, which can alter the incentive for workers to supply costly effort. Since the minimum wage decouples daily job performance

from compensation, workers may have an incentive to shirk. If pollution leads to more workers earning the minimum wage, and this in turn induces shirking, linear regression estimates will be upward biased. On the other hand, the threat of termination may provide a sufficient incentive to provide effort, particularly in our setting where output is easily verified and labor contracts are extremely short-lived, in which case linear regression models should be unbiased.

After merging this worker data with environmental conditions based on readings from air quality and meteorology stations in the California air monitoring network, we first estimate linear models that relate mean ozone concentrations during the typical workday to productivity. We find that ozone levels well below federal air quality standards have a significant impact on productivity: a 10 parts per billion (ppb) decrease in ozone concentrations increases worker productivity by 5.5 percent. To account for potential concerns about shirking, we artificially induce “bottom-coding” on productivity measures for observations where the minimum wage binds, and estimate censored regression models. Under this specification, the actual measures of productivity when the minimum wage binds no longer influence estimates of the impact of ozone on productivity. Thus, if the marginal effects of productivity on this latent variable differ from the marginal effects from our baseline linear model, this would indicate shirking is occurring. Our results, however, remain unchanged, suggesting that the threat of termination provides sufficient incentives for workers to supply effort even when compensation is not directly tied to output.

These impacts are particularly noteworthy as the US Environmental Protection Agency is currently contemplating a reduction in the federal ground-level ozone standard of approximately 10 ppb (Environmental Protection Agency 2010). The environmental productivity effect estimated in this paper offers a novel measure of morbidity impacts that are both more subtle and more pervasive than the standard health impact measures based on hospitalizations and physician visits. Moreover, they have the advantage of already being monetized for use in the regulatory cost-benefit calculations required by Executive Order 12866 (The White House, 1994). In developing countries, where environmental regulations are typically less stringent and agriculture plays a more prominent role in the economy, this environmental productivity effect may have particularly detrimental impacts on national prosperity.

The paper is organized as follows. Section I briefly summarizes the relationship between ozone and health, and highlights potentially important confounders. Section II describes the piece-rate and environmental data. Section III provides a conceptual framework that largely serves to guide our econometric model, which is described in Section IV. Section V describes the results, with a conclusion provided in Section VI.

## I. Background on Ozone and Health

Ozone affects respiratory morbidity by irritating lung airways, decreasing lung function, and increasing respiratory symptoms (Environmental Protection Agency 2006). Studies have consistently linked higher ozone concentrations with increased health care visits for respiratory diseases (see, e.g., Neidell 2009), but ozone can also lead to minor insults that may not necessitate the use of formal health care. For example, research finds decreases in forced-expiratory volume in mail carriers in

Taiwan (Chan and Wu 2005) and agricultural workers in British Columbia, Canada (Brauer, Blair, and Vedal 1996) even at levels below prevailing air quality standards. Symptoms from ozone exposure can arise in as little as one hour, with effects exacerbated by exercise and with continued duration of exposure (see, e.g., Gong et al. 1986; Kulle et al. 1985; McDonnell et al. 1983), both of which are particularly relevant for our study population given the physical demands of the task and prolonged exposure. How these respiratory changes affect productivity is not well understood, though it is plausible to think that diminished lung functioning would negatively impact productivity for physically demanding work such as that found in agriculture.

Recovery from ozone, once removed from exposure, is also quite rapid. Nearly all lung functioning returns to baseline levels in healthy adults within 24 hours of exposure, although recovery can take longer for hyper-responsive adults with underlying health conditions (Folinsbee and Hazucha 2000; Folinsbee and Horvath 1986).<sup>3</sup> Since ozone levels fall considerably overnight as heat and sunlight decline, we expect lagged ozone to have minimal impacts on the productivity of our healthy worker population. As a result, we focus our analyses primarily on the contemporaneous relationship between ozone and productivity. The impact of lagged ozone concentrations is also explored in order to confirm that our workers are indeed healthy.

As noted in the introduction, ozone formation depends, in part, on ambient temperatures. Human exposure to high temperature can lead to severe negative health effects, including heat cramps, exhaustion, and stroke, as well as more subtle impacts on endurance, fatigue, and cognitive performance (e.g., González-Alonso et al. 1999; Hancock, Ross, and Szalma 2007), all of which may diminish the productivity of workers. The impacts can arise in less than an hour (Hancock, Ross, and Szalma 2007) and are likely nonlinear, as it is mostly temperature extremes outside the “comfort zone” that appreciably affect health (Hancock and Warm 1989). As such, our empirical models will include flexible controls for temperature.

## II. Data

Our data comes from a unique arrangement with an international software provider, Orange Enterprises (OE). OE customizes paperless payroll collection for clients, called the Payroll Employee Tracking (PET) Tiger software system. It tracks the progress of employees by collecting real-time data on attendance and harvest levels of individual farm workers in order to facilitate employee and payroll management. The PET Tiger software operates as follows. The software is installed on handheld computers used by field supervisors. At the beginning of the day, supervisors enter the date, starting time, and the crop being harvested. Each employee clocks in by scanning the unique barcode on his or her badge. Each time the employee brings a bushel, bucket, lug, or bin, his or her badge is swiped, recording the unit and time. Data collected in the field is transmitted to a host computer by synchronizing the handheld with the host computer, which facilitates the calculation of worker wages.

We have purchased the rights to daily productivity data from a farm in the Central Valley of California that uses this system. To protect the identity of the farm, we can

<sup>3</sup> Although lung functioning recovers after exposure, long-term damage to lung cells may still occur (Tepper et al. 1989).

only reveal limited information about their operations. The farm, with a total size of roughly 500 acres, produces blueberries and two types of grapes during the warmer months of the year. The farm offers two distinct piece-rate contracts depending on the crop being harvested: time plus pieces (TPP) for the grapes and time plus all pieces (TPAP) for blueberries. Total daily wages ( $w$ ) from each contract can be described by the following equations:

$$(1) \quad \text{TPP: } w = 8h + p \cdot (q - \text{minpcs} \cdot h) \cdot I(q > \text{minpcs} \cdot h)$$

$$\text{TPAP: } w = 8h + p \cdot q \cdot I(q > \text{minpcs} \cdot h),$$

where the minimum wage is \$8 per hour,  $h$  is hours worked,  $p$  is the piece rate,  $q$  is daily output,  $\text{minpcs}$  is the minimum number of hourly pieces to reach the piece rate regime, and  $I$  is an indicator function equal to 1 if the worker exceeds the minimum daily harvest threshold to qualify for piece-rate wages and 0 otherwise. In both settings, if the worker's average hourly output does not exceed  $\text{minpcs}$ , the worker earns minimum wage. The marginal incentive for a worker whose output places them in the minimum wage portion of the compensation schedule is job security. In TPP, the marginal incentive in the piece rate regime is the piece rate. TPAP slightly differs from TPP in that it pays piece rate for *all* pieces when a worker exceeds the minimum hourly rate (as opposed to paying piece rate only for the pieces above the minimum). Hence, the payoff at  $\text{minpcs}$  is nonlinear and provides a stronger incentive to reach the threshold under this contract. The incentive beyond this kink remains linear as under TPP.

The worker dataset we obtained consists of a longitudinal file that follows workers over time by assigning workers a unique identifier based on the barcode of their employee badge. It includes information on the total number of pieces harvested by each worker,<sup>4</sup> the location of the field, the type of crop, the terms of the piece rate contract,<sup>5</sup> time in and out, and the gender of the worker.<sup>6</sup> Data quality is extremely high, as its primary purpose is to determine worker wages. The analyses in this paper are based on data from the farm for their 2009 and 2010 growing seasons.

Our measures of environmental conditions come from data on air quality and weather from the system of monitoring networks maintained by the California Air Resources Board (2012). These data offer hourly measures of various pollutants and meteorological elements at numerous monitoring sites throughout the state. The

<sup>4</sup>For one of the three crops, harvests are done in crews of three and individual productivity is measured as the total output of the crew divided by the crew size. While crew work could introduce free-riding incentives, our measure of the environmental productivity effect will only be biased if these incentives change due to pollution. This will only occur if both of the following are true: workers are differentially affected by ozone and the complementarities in team production are very high (e.g., Leontief production). While each member of a crew has a specific task, they typically help each other throughout the day, suggesting that labor is indeed substitutable within the crew. Moreover, Hazucha et al. (2003) find little evidence of heterogeneous health impacts of ozone across healthy men and women. Thus, assigning average productivity measures to individuals within a crew should not bias our estimates.

<sup>5</sup>Piece-rate contracts, and thus minimum daily harvest thresholds, are fixed to the crop for the duration of the season. For simplicity, we label the two types of grapes as two crops given that they have different contracts.

<sup>6</sup>Although we have limited data on the demographic characteristics of our workers, demographics of piece-rate agricultural workers in California obtained from the National Agricultural Workers Survey, an employment-based random survey of agricultural workers, indicates these workers are poor, uneducated, and speak limited English, with the vast majority migrants from Mexico.

farm is in close proximity to several monitors: three monitors that provide measurements of ozone and other environmental variables are within 20 miles of the farm, with the closest less than 10 miles away.<sup>7</sup> For all environmental variables, we compute an average hourly measure for the typical work day, which starts at 6 AM and ends at 3 PM.

We assign environmental conditions to the farm using data from the closest monitoring station to the farm. While studies find that ozone measurements at fixed monitors are often higher than measurement from personal monitors attached to individuals in urban settings (O'Neill et al. 2003), this is less of a concern in the agricultural setting where ratios of personal to fixed monitors have been found to be as high as 0.96 (Brauer and Brook 1995). Furthermore, even when the difference exists, the within-person variation is highly correlated with the within-monitor variation (O'Neill et al. 2003). As a crude test for spatial uniformity of ozone levels, we regress ozone levels from the closest monitor to the farm against the second closest monitor with data available for both years, which is roughly 30 miles away, and obtain an  $R^2$  of 0.85.<sup>8</sup> Thus, despite its simplicity, we expect measurement error using our proposed technique for assigning ozone to the farm to be quite small.

Our data follows roughly 1,600 workers intermittently over 155 days. Table 1 shows summary statistics for worker output and characteristics, environmental variables, and a breakdown of the sample size. There are three main crops harvested by this farm.<sup>9</sup> Under the TPAP contracts, which are used to harvest crop type 1, workers reach the piece-rate regime 24 percent of workdays. For the crops paid under TPP, workers reach the piece-rate regime 57 percent of workdays for crop 2 and 47 percent of workdays for crop 3. Under these contracts, the average hourly wages are \$8.41, \$8.16, and \$8.41 for each of the three crops, respectively. We also see that variation in worker output is equally driven by variation within as well as across workers. Worker tenure with the farm is rather short, averaging 20 days, and both genders are well represented.<sup>10</sup>

In terms of environmental variables, the average ambient ozone level for the day is under 50 ppb, with a standard deviation of 13 ppb and a maximum of 86 ppb. Since this measure of ozone is taken over the average workday from 6 AM to 3 PM, it corresponds closely with national ambient air quality standards (NAAQS), which are based on eight-hour ozone measures. Current NAAQS are set at 75 ppb, suggesting that, while ozone levels during work hours can lead to exceedances of air-quality standards, most workdays are not in violation of regulatory standards.<sup>11</sup> Consistent with the area being prone to ozone formation, mean temperature and sunlight (as proxied by solar radiation) are high, and precipitation is low.

<sup>7</sup>To protect the identity of the farm, we cannot reveal the exact distance.

<sup>8</sup>Comparable  $R^2$  for temperature is 0.94 and for particulate matter less than  $2.5 \mu\text{g}/\text{m}^3$ , another pollutant of much interest, is only 0.27; hence we do not focus on this important pollutant but include it as a covariate.

<sup>9</sup>The timing of the harvest is determined by when each crop is ready to be picked, so workers have little discretion over which crop to harvest on any given day. We explore the potential impact of worker selection into crops in Section VC.

<sup>10</sup>Gender is not reported for 19 percent of the sample.

<sup>11</sup>Violation of NAAQS is based on the daily maximum eight-hour ozone. Since our measure of ozone begins at 6 AM, a time when ozone levels are quite low, the daily maximum eight-hour ozone is generally higher than our measure.

TABLE 1—SUMMARY STATISTICS

	Observations	Mean	SD	SD within worker	SD between workers
<i>Panel A. Productivity variables (N = 35,461)</i>					
Minimum wage regime					
Time + all pieces, \$0.5/Piece	11,752	2.03	0.57	0.44	0.47
Time + pieces, \$0.3/Piece	3,761	3.07	0.78	0.65	0.70
Time + pieces, \$1/piece	5,918	2.29	0.48	0.31	0.44
Hours worked	21,431	7.64	1.29	0.76	1.20
Piece-rate regime					
Time + all pieces, \$0.5/Piece	3,675	3.42	0.40	0.30	0.32
Time + pieces, \$0.3/Piece	5,115	4.93	0.86	0.70	0.64
Time + pieces, \$1/piece	5,240	3.88	0.82	0.50	0.66
Hours worked	14,030	7.34	1.53	0.96	1.36
Worker characteristics					
Tenure (weeks)	35,461	2.78	2.49		
Percent male	35,461	0.30	0.46		
Percent female	35,461	0.51	0.50		
	Mean	SD	Min	Max	
<i>Panel B. Environmental variables (N = 155)</i>					
Ozone (ppb)	47.77	13.24	10.50	86.00	
Temperature (F)	78.15	8.52	56.30	96.98	
Atmospheric pressure (mb)	1,001.55	6.48	988.86	1,012.59	
Resultant wind speed (mph)	2.74	0.53	1.61	4.60	
Solar radiation (W/m <sup>2</sup> )	837.33	174.07	187.00	1,083.33	
Precipitation (mm)	2.40	5.05	0.00	35.48	
Dew point (F)	51.96	5.81	33.14	63.43	
Particulate matter <2.5 (μg/m <sup>3</sup> )	11.69	5.74	1.00	24.44	
<i>Panel C. Sample</i>					
Number of dates	155				
Number of employees	1,664				

Notes: The sample size in panel A refers to worker-days, while the sample size in panel B refers to the number of harvest dates. SD: Standard deviation. Crop 1 is time plus all pieces, with a piece rate of \$0.5/piece and minimum pieces per hour of three. Crop 2 is time plus pieces, with a piece rate of \$0.3/piece and minimum pieces per hour of four. Crop 3 is time plus pieces, with a piece rate of \$1/piece and minimum pieces per hour of three.

For a deeper look at productivity [Figure 1](#) plots the distribution of average pieces collected per hour by crop and overall, with a line drawn at the rate that corresponds with the level of productivity that separates the minimum wage from the piece-rate regime (the regime threshold). To combine productivity across crops, we standardize average hourly productivity by subtracting the minimum number of pieces per hour required to reach the piece-rate regime and dividing by the standard deviation of productivity for each crop, so the value that separates regimes is 0. For the crop paid TPAP, we see evidence of mass displaced just before the regime threshold, which is consistent with the strong incentives associated with just crossing the threshold under this payment scheme. For the two crops paid TPP, the distribution of productivity follows a symmetric normal distribution quite closely, with the exception of some displacement immediately surrounding the regime threshold for crop 2. Since crop 2 is harvested at a rate roughly 50 percent higher than crop 3, as shown in Table 1, it may be easier for workers who are close to the threshold to push themselves just above it by collecting a little more. If shirking occurs when the minimum wage binds, then we would expect part of the distribution to be shifted away from the area just left of the regime threshold and into the left tail. These plots, however,

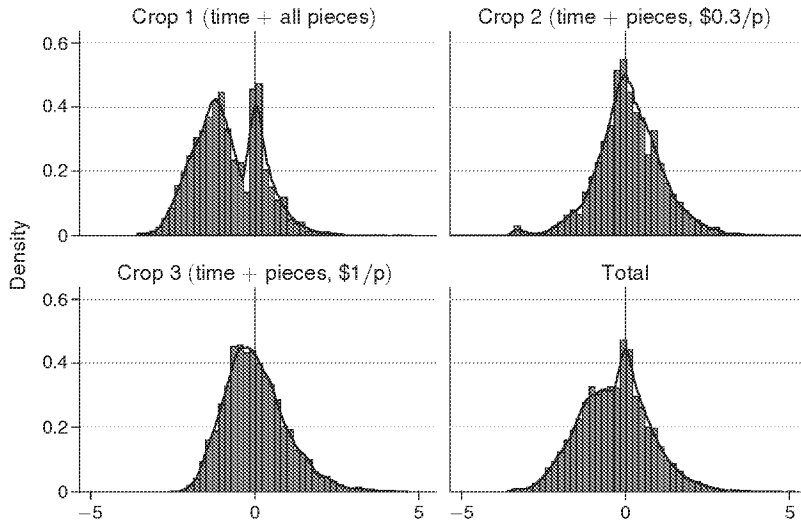


FIGURE 1. STANDARDIZED AVERAGE HOURLY PIECES COLLECTED BY CROP AND FOR ALL CROPS

*Notes:* This figure plots the standardized average hourly pieces for each of the three crops and all crops, along with a nonparametric kernel density estimate. We standardize average hourly productivity by subtracting the minimum number of pieces per hour required to reach the piece-rate regime and dividing by the standard deviation of productivity for each crop. The vertical line reflects the regime threshold for crossing from the minimum wage to the piece-rate regime, which is zero for all crops given the standardization.

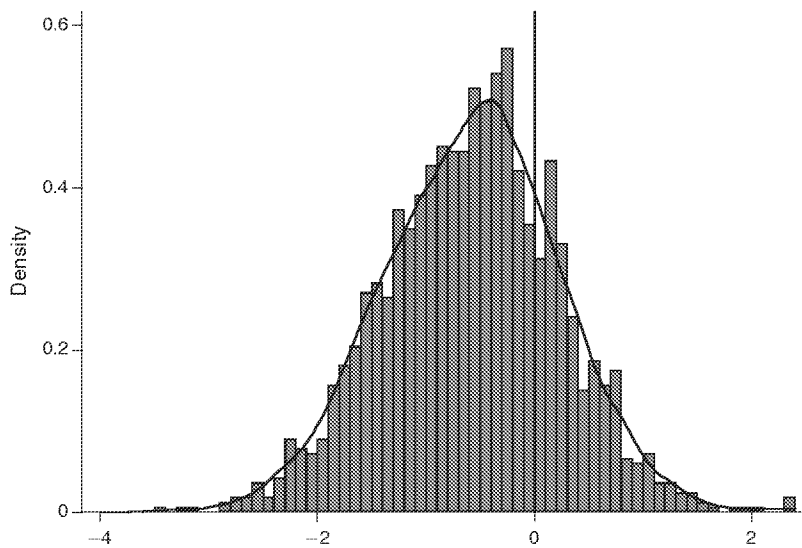


FIGURE 2. VARIATION IN PRODUCTIVITY BY WORKER, ALL CROPS

*Notes:* This figure plots the mean of the standardized average hourly pieces for all crops by worker. We standardize average hourly productivity by subtracting the minimum number of pieces per hour required to reach the piece-rate regime and dividing by the standard deviation of productivity for each crop.

do not exhibit such patterns, suggesting that shirking among those receiving a fixed wage is minimal.

The significant variation in pieces collected in Figure 1 is also noteworthy, as this is critical for obtaining precise estimates of the impact of ozone. Figures 2 and 3

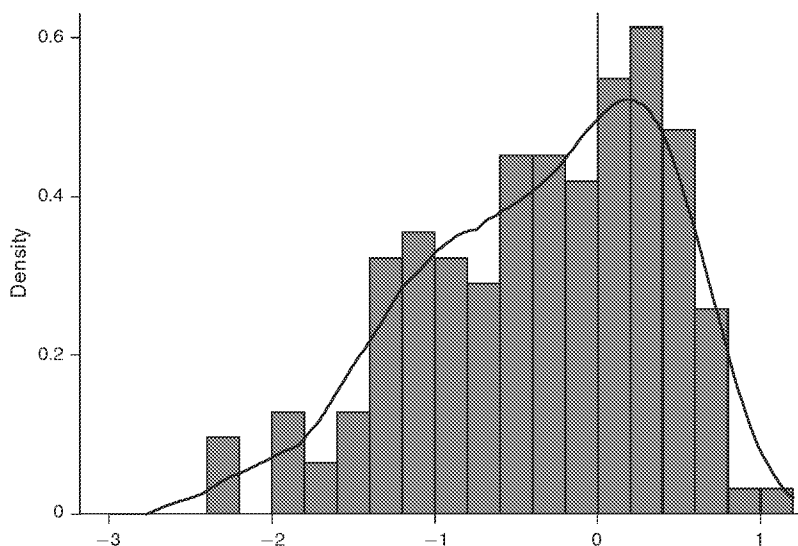


FIGURE 3. VARIATION IN PRODUCTIVITY BY DAY, ALL CROPS

*Notes:* This figure plots the mean of the standardized average hourly pieces for all crops by day. We standardize average hourly productivity by subtracting the minimum number of pieces per hour required to reach the piece rate regime and dividing by the standard deviation of productivity for each crop.

further illustrate this variation both within and across workers. For Figure 2, we collapse the data to the worker level by computing each worker's mean daily productivity over time. For Figure 3, we collapse the data to the daily level by computing the mean output of all workers on each day. This significant variation suggests that both worker ability and environmental conditions appear to be important drivers of worker productivity.

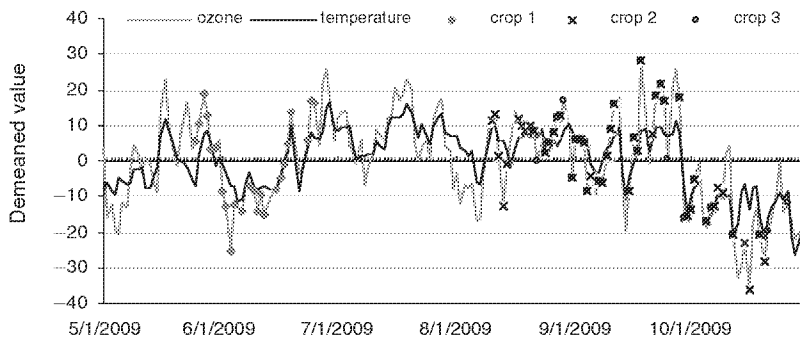
To illustrate the relationship between ozone and temperature, Figure 4 plots the demeaned average hourly ozone and temperature by day separately for the 2009 and 2010 ozone seasons, with an indicator for days on which harvesting occurs for each crop. This Figure reveals considerable variation in both variables over time. Importantly, while ozone and temperature are often correlated—temperature is an input into the production of ozone—there is ample independent variation for conducting our proposed empirical tests.<sup>12</sup> We also control for temperature flexibly to ensure that we are properly accounting for this relationship.

### III. Conceptual Framework

In this section, we develop a simple conceptual model to illustrate worker incentives under a piece-rate regime with a minimum wage guarantee. We begin by assuming that the output  $q$  for any given worker is a function of effort  $e$  and pollution levels  $\Omega$ . Workers are paid piece rate  $p$  per unit output, but only if their total daily wage

<sup>12</sup>The  $R^2$  from a regression of ozone on temperature alone is 0.61. When we more flexibly control for temperature and also include additional environmental variables as specified in the econometric model (described below), the  $R^2$  increases to 0.85.

Panel A. Year 2009



Panel B. Year 2010

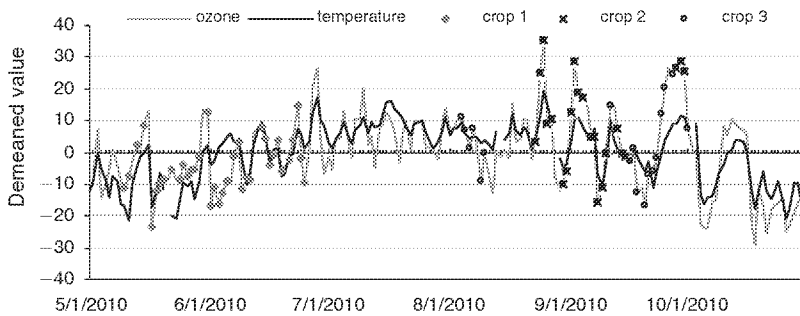


FIGURE 4. AVERAGE DEMEANED DAILY OZONE AND TEMPERATURE, AND CROP HARVEST DAYS, BY YEAR

*Note:* These figures plot demeaned ozone and temperature levels by day for 2009 and 2010, and indicate the days each of the three crops were harvested.

is at least as large as the daily minimum wage  $\bar{y}$ .<sup>13</sup> In anticipation of our empirical model, we let zero denote the threshold level of output at which workers graduate from the minimum wage regime. Since employment contracts are extremely short-lived, we assume that the probability of job retention  $\tau$  is an increasing function of output levels  $q$  when  $q < 0$ .<sup>14</sup> Denoting the costs of worker effort as  $c(e)$  and the value associated with job retention as  $k$ , we can characterize the workers' maximization problem above and below the threshold output level.

For those workers whose output level qualifies them for the piece-rate wage ( $q \geq 0$ ), effort will be chosen in order to maximize the following:

$$(2) \quad \max_e p \cdot q(e, \Omega) - c(e).$$

<sup>13</sup>While minimum wage standards are typically fixed at an hourly rate, the fixed-length workday in our setting allows us to translate this into a daily rate.

<sup>14</sup>The assumption of perfect retention for those above the threshold is made for simplicity. As long as the probability of job retention is higher for those workers whose harvest levels exceed the threshold, the basic intuition behind the results that follow remain unchanged.

For those workers whose output level places them under the minimum wage regime ( $q < 0$ ), effort will be chosen to maximize the following:

$$(3) \quad \max_e \bar{y} - \tau(q(e, \Omega))k - c(e).$$

The first-order conditions for each are

$$(2') \quad p \cdot \frac{\partial q}{\partial e} - \frac{\partial c}{\partial e} = 0;$$

$$(3') \quad -\frac{\partial \tau}{\partial q} \frac{\partial q}{\partial e} k - \frac{\partial c}{\partial e} = 0.$$

Under the piece-rate regime, workers will supply effort such that the marginal cost of that effort is equal to additional compensation associated with that effort. For those workers being paid minimum wage, the incentive to supply effort is driven entirely by concerns about job security.<sup>15</sup> Workers supply effort such that the marginal cost of that effort is equal to the increased probability of job retention associated with that effort times the value of job retention.

The threat of punishment for low levels of output is instrumental in inducing effort under the minimum wage regime. If workers are homogenous and firms set contracts optimally, the gains from job retention due to extra effort will be set equal to the piece-rate wage, i.e.,  $-\frac{\partial \tau}{\partial q} k = p$ , such that effort exertion will be identical across both segments of the wage contract. If firms are unable to design optimal contracts, effort will differ across regimes. Of particular concern is the situation in which termination incentives are low-powered; i.e.,  $-\frac{\partial \tau}{\partial q} k < p$ . In this case, workers essentially have a limited liability contract, and thus have incentives to shirk under the minimum wage regime. Moreover, since the productivity impacts of pollution increase the probability of workers falling under the minimum wage portion of the compensation scheme, pollution will also indirectly increase the incentive to shirk, which we must account for in our econometric model.

#### IV. Econometric Model

The worker maximization problem characterized in the previous section suggests the following econometric model:

$$(4) \quad E[q | \Omega, \mathbf{X}] = P(q \geq 0 | \Omega, \mathbf{X}) \times E[q | \Omega, \mathbf{X}, q \geq 0] \\ + (1 - P(q \geq 0 | \Omega, \mathbf{X})) \times E[q | \Omega, \mathbf{X}, q < 0],$$

where  $P$  is the probability a worker has output high enough to place them in the piece-rate regime,  $1 - P$  is the probability a worker's output places them in the

<sup>15</sup>This is conceptually quite similar to the model of efficiency wages and unemployment advanced in Shapiro and Stiglitz (1984), where high wages and the threat of unemployment induce workers to supply costly effort.

minimum wage regime, and  $\mathbf{X}$  are other factors that affect productivity (described in more detail below). We are primarily interested in the direct effect of pollution on productivity (the environmental productivity effect), and use two approaches for estimating this relationship. First, we estimate the following linear model:

$$(5) \quad q = \beta^{ols} \Omega + \theta^{ols} \mathbf{X} + \varepsilon^{ols},$$

where  $\beta^{ols}$  is the sum of the direct impact and, if it exists, the indirect impact of pollution on productivity via shirking. If the piece-rate contract is set optimally by imposing an appropriate termination threat as described in the previous section, there is no incentive to shirk, and  $\beta^{ols}$  will only capture the environmental productivity effect.<sup>16</sup> To the extent that contracts are not set optimally and there is an incentive to shirk in the minimum wage regime,  $\beta^{ols}$  will instead reflect not only the environmental productivity effect, but also the indirect effect due to the interaction of this pollution effect with shirking incentives, and hence provide an upper bound of the estimate of the environmental productivity effect.

To account for potential shirking, as a second approach we estimate equation (4) by artificially “bottom-coding” our data and estimating censored regression models. To do this, we leave all observations in the piece-rate regime as is, but assign a measure of productivity of 0 to all observations in the minimum wage regime.<sup>17</sup> Thus, our estimation strategy can be viewed as a Type I Tobit model of the following form:

$$(6) \quad \begin{aligned} q^* &= \beta^{cen} \Omega + \theta^{cen} \mathbf{X} + \varepsilon^{cen} \\ q &= q^* \text{ if } q \geq 0 \\ q &= 0 \text{ if } q < 0, \end{aligned}$$

where  $q^*$  is the latent measure of productivity. Because we are interested in the impact of pollution on actual productivity, which can take on values less than zero, the environmental productivity effect is the marginal effect of pollution on the latent variable  $q^*$ , which is simply  $\beta^{cen}$ . Importantly, the actual values of productivity in the minimum wage regime will have no impact on the likelihood function, and hence on  $\beta^{cen}$ . That is, if shirking occurs so that the distribution of productivity in the minimum wage regime is shifted to the left, this shift will no longer influence estimates of  $\beta^{cen}$  because they have been censored. Therefore, even if workers are shirking when paid minimum wage, our estimates of  $\beta^{cen}$  will only capture the environmental productivity effect.

We include data from all crops in one regression by using the standardized measures of productivity described in the data section. We specify ozone in units of 10 ppb since this value is close to prior and recently proposed policy changes for ozone in the United States. Given our standardization of the dependent variable, the

<sup>16</sup> Although environmental conditions may affect workers, they may also have a direct impact on crops. While there is considerable evidence to support the claim that chronic exposure to ozone affects crop yield (see, e.g., Manning, Flagler, and Frenkel 2003), there is no evidence to support an effect from acute exposure.

<sup>17</sup> Because of our standardization of productivity, a value of 0 represents the value when workers switch from the minimum wage to piece rate regime.

coefficients can be interpreted as a standard deviation change in productivity from a 10 ppb change in ozone. To control for other factors that may affect productivity, the vector  $\mathbf{X}$  includes controls for gender, tenure with the farm (a quadratic), temperature, humidity, precipitation, wind speed, air pressure, solar radiation, and fine particulate matter (PM<sub>2.5</sub>), all measured as the mean over the typical workday. Since ozone is formed in part because of temperature and sunlight, it is essential that we properly control for these variables. To do this, we include a series of temperature indicator variables for every 2.5 degrees Fahrenheit, and also interact these indicators with solar radiation. To control for humidity, we use dew point temperature, a measure of absolute humidity that is not a function of temperature (Barreca 2012), and also include indicator variables for every 2.5 degrees Fahrenheit. We also include a series of day-of-week indicators to capture possible changes in productivity throughout the week, indicator variables for the crop to account for the mean shift in productivity from different contracts, and year-month dummies to control for trends in pollution and productivity within and across growing seasons. All standard errors are two-way clustered on the date because the same environmental conditions are assigned to all workers on a given day and on the worker to account for serial correlation in worker productivity (Cameron, Gelbach, and Miller 2011).

In addition to the aforementioned concerns regarding shirking, several additional primary threats to identification remain. As previously discussed, potential confounding due to weather may bias results, so we control flexibly for temperature and sunlight—two important inputs into the ozone formation process. Furthermore, labor supply decisions may respond to ozone levels. Since we have measures of days and hours worked, we directly explore such responses. Lastly, if there is heterogeneity in the productivity effects of ozone and workers select into crops, this may hinder inference. To assess this, we explore both the heterogeneity of ozone effects and whether ozone or worker characteristics are related to crop assignment.

## V. Results

### A. Labor Supply Responses

We begin by assessing our earlier claim that the labor supply of agricultural workers is insensitive to ozone levels in this setting. We estimate linear regression models for the decision to work and the number of hours worked (conditional on working), both with and without worker fixed effects. Shown in Table 2 the results in the first two columns, which focus on the decision to work, provide no evidence of a labor supply response to ozone.<sup>18</sup> The second two columns also reveal that the number of hours worked is not significantly related to ozone levels. Even at the lower 95 percent confidence interval, a 10 ppb increase in ozone is associated with a 0.28 drop in hours worked, which is a roughly 17-minute decrease in hours worked. The insensitivity of these results to including worker fixed effects strengthens our confidence in these findings. Thus, consistent with our contention that avoidance behavior is not

<sup>18</sup> Marginal effects from logit and probit models for the decision to work are virtually identical to the results from the linear probability model.

TABLE 2—REGRESSION RESULTS OF THE EFFECT OF OZONE ON AVOIDANCE BEHAVIOR

	Extensive margin: probability(work)		Intensive margin: hours worked	
	(1)	(2)	(3)	(4)
Ozone (10 ppb)	0.001 [0.026]	−0.001 [0.027]	0.015 [0.149]	0.026 [0.154]
Worker fixed effect	N	Y	N	Y
Mean of dep. var.	0.905	0.905	7.52	7.52
Observations	39,223	39,223	35,461	35,461
R <sup>2</sup>	0.12	0.17	0.33	0.36

Notes: Standard errors clustered on date and worker in brackets. Hours worked is conditional upon working. All regressions include controls for gender, farm tenure (quadratic), temperature (2.5 degree F indicators), solar radiation, temperature (2.5 degree F indicators) × solar radiation, air pressure, wind speed, dew point (2.5 degree F indicators), precipitation, particulate matter < 2.5 μ<sub>g</sub>, day of week dummies, month × year dummies, and piece rate contract type dummies. All environmental variables are the mean of hourly values from 6 AM–3 PM.

TABLE 3—MAIN REGRESSION RESULTS OF THE EFFECT OF OZONE ON PRODUCTIVITY

	(1)	(2)	(3)	(4)
Ozone (10 ppb)	−0.143** [0.068]	−0.174** [0.074]	−0.164 [0.109]	−0.155 [0.100]
Model	Linear	Tobit	Median	Censored median
Mean of dep. var.	−0.323	−0.323	−0.323	−0.323
Observations	35,461	35,461	35,461	25,955
(Psuedo) R <sup>2</sup>	0.34	0.12	0.22	0.28

Notes: Standard errors clustered on date and worker in brackets. The dependent variable is standardized hourly pieces collected, which is the average hourly productivity minus the minimum number of pieces per hour required to reach the piece rate regime, divided by the standard deviation of productivity for each crop. All regressions include controls for gender, farm tenure (quadratic), temperature (2.5 degree F indicators), solar radiation, temperature (2.5 degree F indicators) × solar radiation, air pressure, wind speed, dew point (2.5 degree F indicators), precipitation, particulate matter < 2.5 μ<sub>g</sub>, day of week dummies, month × year dummies, and piece rate contract type dummies. All environmental variables are the mean of hourly values from 6 AM–3 PM. Bootstrapped standard errors for both median regressions were obtained using 250 replications.

- \*\*\*Significant at the 1 percent level.
- \*\*Significant at the 5 percent level.
- \*Significant at the 10 percent level.

an issue in this setting, farm workers do not appear to adjust their work schedules in response to ozone levels.

B. Main Productivity Results

In Table 3, we present our main results. Column 1 presents results from our linear regression model. The estimated coefficient suggests that a 10 ppb increase in ozone leads to a statistically significant decrease in productivity of 0.143 of a standard deviation.<sup>19</sup> Based on the distribution of ozone and productivity in our sample, this estimate implies that a 10 ppb decrease in ozone increases worker

<sup>19</sup> Although we control for other local pollutants that might affect productivity, such as PM<sub>2.5</sub>, we do not control for NO<sub>x</sub> because it is a precursor to ozone formation. The transport of ozone, however, suggests that most of the

productivity by 5.5 percent. If wage contracts are set optimally, this is an unbiased estimate of the effect of ozone pollution. If contracts are not set optimally and workers shirk when the minimum wage binds, then this estimate will overstate the impact of ozone. In column 2 we show results from a Type I Tobit model, where we artificially censor observations when the minimum wage binds, and find a slightly larger estimate of 0.174 standard deviation effect from a 10 ppb change in ozone, with the difference not statistically different from those found under the linear model.<sup>20</sup>

Since this Tobit model assumes normality and homoskedasticity, we assess the sensitivity of our results to these assumptions by estimating a censored median regression model, also displaying results from an uncensored median regression model as a reference point.<sup>21</sup> Shown in column 3, the median regression estimate of 0.164 is quite comparable to the linear regression estimate, which is not surprising given the distribution of productivity shown in Figure 1. The censored median regression estimate of 0.155, shown in column 4, is also quite similar to the estimates from the parametric censored models, lending support to the parametric assumptions of the Tobit model. The comparability of the four estimates in this table suggests that shirking due to the minimum wage is relatively minimal in this setting. Thus, the basic linear regression specification appears to yield unbiased estimates of the pollution productivity effect.<sup>22</sup>

In Table 4, we explore the sensitivity of the linear estimates to various additional assumptions. Column 1 repeats the baseline results. In column 2 we include worker fixed effects. Although this increases the explanatory power of our regressions considerably, the estimates for ozone fall somewhat to 0.101, though this change is not statistically significant. Thus, consistent with the notion that workers are not selecting into employment on any given day based on ozone concentrations, cross-sectional and fixed effects estimates are quite similar.

Figure 1 provided some evidence that worker effort changes near the regime threshold, particularly for crop 1 where contracts are TPAP. If higher ozone levels reduce productivity and hence make it more likely for workers to fall into the minimum wage regime, this offsetting increase in effort may bias our results downward. In the next two columns of Table 4, we address this by excluding observations that are close to the regime threshold, varying our definition of “close.” Consistent with expectations, our results are slightly larger as we exclude more observations, but these differences are minimal.

While our data agreement entitles us to productivity data aggregated to the daily level, we have time-stamped measures for crop 1, thus allowing us to explore how the impacts of ozone vary throughout the day. There are two notable limitations in

$\text{NO}_x$  that contributes to the production of ozone is emitted in urban centers far from the farm. Consistent with this, if we add a control for local  $\text{NO}_x$ , the coefficient on ozone changes minimally.

<sup>20</sup>Consistent with these results, if we specify the dependent variable as the probability the worker reaches the piece-rate regime, we find that ozone reduces this probability by 5.9 percentage points and is statistically significant at the 10 percent level.

<sup>21</sup>We estimate a censored median model using the three-step procedure developed by Chernozhukov and Hong (2002).

<sup>22</sup>Consistent with the notion that shirking may be minimized through the threat of termination, we find that workers in the lower deciles of the productivity distribution are much more likely to separate from the farm than those in the upper deciles (unreported results available upon request from the authors).

TABLE 4—SENSITIVITY OF REGRESSION RESULTS OF THE EFFECT OF OZONE ON PRODUCTIVITY

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Ozone	−0.143**	−0.101*	−0.148**	−0.160**	−0.197***	−0.197***	−0.248***	−0.229***
(10 ppb)	[0.068]	[0.059]	[0.075]	[0.080]	[0.0683]	[0.0686]	[0.0788]	[0.0842]
1 lag ozone						0.004		−0.066
(10 ppb)						[0.045]		[0.056]
2 lag ozone								0.114**
(10 ppb)								[0.0493]
Sum of coefficients						−0.193		−0.182
						[0.076]**		[0.100]*
Model	Baseline	Worker fixed effect	Exclude obs. 0.1 SD of regime threshold	Exclude obs. 0.2 SD of regime threshold	Exclude Monday	Exclude Monday	Exclude Monday and Tuesday	Exclude Monday and Tuesday
Mean of dep. var.	−0.323	−0.323	−0.360	−0.389	−0.235	−0.235	−0.183	−0.183
Observations	35,461	35,461	31,706	29,376	25,456	25,456	17,498	17,498
R <sup>2</sup>	0.34	0.59	0.36	0.38	0.36	0.36	0.35	0.36

Notes: Standard errors clustered on date and worker in brackets. The dependent variable is standardized hourly pieces collected, which is the average hourly productivity minus the minimum number of pieces per hour required to reach the piece rate regime, divided by the standard deviation of productivity for each crop. All regressions are based on linear models that include controls for gender, farm tenure (quadratic), temperature (2.5 degree F indicators), solar radiation, temperature (2.5 degree F indicators) × solar radiation, air pressure, wind speed, dew point (2.5 degree F indicators), precipitation, particulate matter < 2.5  $\mu_g$ , day of week dummies, month × year dummies, and piece rate contract type dummies. All environmental variables are the mean of hourly values from 6 AM–3 PM.

\*\*\*Significant at the 1 percent level.

\*\*Significant at the 5 percent level.

\*Significant at the 10 percent level.

this intraday analysis: (i) while pieces can be delivered at any time, environmental variables are measured by clock hour; and (ii) workers sometimes deliver several pieces at once. As a result, we construct hourly productivity measures using linear interpolation. We then use this linearly interpolated hourly data to examine intraday impacts by interacting ozone with the hour of the day, also controlling for hour of the day to account for changes in fatigue as the day progresses. Although the estimate for each hour is not statistically significant at conventional levels, which is not surprising given the measurement error induced by interpolation, the estimates suggest a pattern whereby ozone begins to impact productivity by 10 AM and remains fairly steady from that point onward (results available upon request).

To address potential concerns about the cumulative effect of ozone exposure, we also present results that include one- and two-day lags of ozone. Since ozone levels may only reflect exposure on days when workers actually work, we limit our focus to days when workers have worked the previous day by excluding from our analysis the first one or two days of the workweek depending on how many lags we include in our specification. Shown in column 5 of Table 4 are results without any lags but excluding Monday, which are slightly higher than the baseline results. Including one lag of ozone, shown in column 6, we find that the coefficient on contemporaneous ozone remains the same, and lagged ozone is negative but statistically insignificant. The results in column 7 show that excluding the first two workdays continues to increase the contemporaneous coefficient on ozone. Including two lags of ozone, column 8 shows that the coefficient on contemporaneous ozone remains statistically

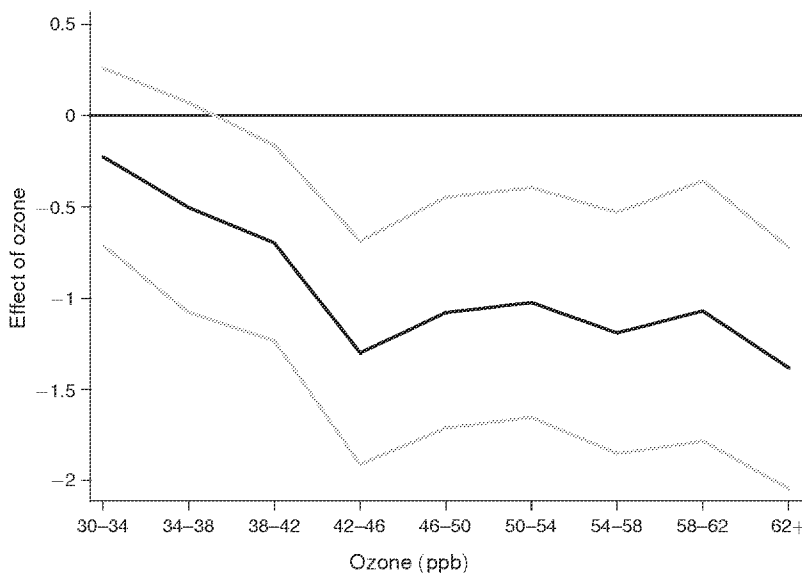


FIGURE 5. REGRESSION RESULTS OF THE EFFECT OF OZONE ON PRODUCTIVITY  
USING MORE FLEXIBLE CONTROLS FOR OZONE

*Notes:* This figure plots the coefficients for the ozone indicator variables ( $< 30$  ppb reference category), with the 95 percent confidence interval based on standard errors clustered on date and worker in gray. The dependent variable is standardized hourly pieces collected, which is the average hourly productivity minus the minimum number of pieces per hour required to reach the piece rate regime, divided by the standard deviation of productivity for each crop. The regression includes controls for gender, farm tenure (quadratic), temperature (2.5 degree F indicators), solar radiation, temperature (2.5 degree F indicators)  $\times$  solar radiation, air pressure, wind speed, dew point (2.5 degree F indicators), precipitation, particulate matter  $< 2.5 \mu_g$ , day of week dummies, month  $\times$  year dummies, and piece rate contract type dummies. All environmental variables are the mean of hourly values from 6 AM–3 PM.

significant and again unchanged, while one lag of ozone is statistically insignificant and the second lag is significant but positive, with colinearity of ozone across days as one possible explanation for the seemingly perverse sign. Most notably, the sum of the ozone coefficients is quite close to the contemporaneous effect regardless of the lags included. Together, these estimates suggest that the predominant effect of ozone is from same-day exposure, with an overnight respite from ozone sufficient for lung functioning to return to baseline levels. Moreover, this rapid recovery implies that the environmental productivity effects measured in this paper are predominantly impacting a healthy population.<sup>23</sup>

Throughout our analysis, we have assumed ozone has a linear effect on productivity. In Figure 5, we present estimates that allow for a nonlinear effect by including indicator variables for every 4 ppb of ozone, omitting  $< 30$  ppb as the reference category. As shown, the figure illustrates a relatively linear and steady increase in the productivity impacts of ozone over the entire range of ozone. Perhaps more importantly, the impacts appear to become statistically significant at 42–46 ppb, a

<sup>23</sup> Recall from Section II that chamber studies suggest a rapid recovery from ozone exposure for healthy individuals. As further evidence consistent with these workers being generally healthy, we find that lagged ozone levels are not significantly related to the decision to work.

TABLE 5—HETEROGENEITY OF REGRESSION RESULTS OF THE EFFECT OF OZONE ON PRODUCTIVITY

	(1)	(2)	(3)	(4)	(5)
Ozone (10 ppb)	−0.143** [0.068]	−0.149** [0.075]	−0.169** [0.069]	−0.135* [0.076]	−0.006 [0.041]
Ozone (10 ppb) × tenure		−0.007 [0.015]			
Ozone (10 ppb) × tenure <sup>2</sup>		0.002 [0.001]			
Ozone (10 ppb) × female			0.040** [0.017]		
Ozone (10 ppb) × unknown			0.029 [0.025]		
Ozone (10 ppb) × crop1				−0.216*** [0.071]	
Ozone (10 ppb) × crop2				0.149** [0.060]	
Tenure	0.038* [0.023]	0.083 [0.077]	0.039* [0.023]	0.054** [0.022]	0.000 [0.015]
Tenure <sup>2</sup>	−0.002 [0.002]	−0.013* [0.007]	−0.002 [0.002]	−0.003* [0.002]	0.002 [0.001]
Female	−0.094*** [0.035]	−0.092*** [0.035]	−0.284*** [0.083]	−0.093*** [0.035]	0.257*** [0.039]
Unknown	0.069 [0.050]	0.068 [0.050]	−0.07 [0.125]	0.062 [0.049]	0.093* [0.053]
Model	Baseline	Tenure interaction	Gender interaction	Crop interaction	y = pr(crop 2)
Mean of dep. var.	−0.323	−0.323	−0.323	−0.323	0.443
Observations	35,461	35,461	35,461	35,461	20,034
R <sup>2</sup>	0.344	0.346	0.345	0.356	0.201

Notes: Standard errors clustered on date and worker in brackets. The dependent variable in columns 1–4 is standardized hourly pieces collected, which is the average hourly productivity minus the minimum number of pieces per hour required to reach the piece rate regime, divided by the standard deviation of productivity for each crop. The dependent variable in column 5 is whether the worker harvested crop 2, and the sample is restricted to days when only crop 2 or 3 are harvested. In addition to covariates shown, all regressions are based on linear models that include controls for temperature (2.5 degree F indicators), solar radiation, temperature (2.5 degree F indicators) × solar radiation, air pressure, wind speed, dew point (2.5 degree F indicators), precipitation, particulate matter < 2.5  $\mu_g$ , day of week dummies, month × year dummies, and piece rate contract type dummies. All environmental variables are the mean of hourly values from 6 AM–3 PM. “Unknown” indicates that gender was not reported in our data.

\*\*\* Significant at the 1 percent level.

\*\* Significant at the 5 percent level.

\* Significant at the 10 percent level.

concentration well below current air quality standards of 75 ppb or even proposed reforms of 60 ppb.

C. Heterogeneity of Productivity Results

To assess whether individuals are differentially affected by ozone, we explore potential heterogeneity by interacting ozone with the limited worker characteristics in our dataset (tenure with the farm and gender) and with the crop, shown in Table 5.<sup>24</sup> While

<sup>24</sup> We also estimated quantile regression models for each decile of worker productivity, and found that ozone has a similar effect on worker productivity throughout the entire productivity distribution (results available upon request).

workers with more experience may be more resilient to ozone by being better able to pace themselves throughout the day, column 2 finds no such evidence. Interacting ozone with a quadratic in tenure is statistically insignificant and the level effect of ozone is largely unchanged. Shown in column 3, we find that ozone has a smaller impact on productivity for women.<sup>25</sup> While the magnitude of the difference between the effect for men and women is quite small, this result is contrary to laboratory studies that generally find no differential impact on lung functioning by gender (Hazucha, Folinsbee, and Bromberg 2003). Column 4 interacts ozone with crop dummy variables and reveals considerable heterogeneity in the productivity effects of ozone. The effect for crop 1 is significantly larger than crop 3 (the reference category), while the effect for crop 2 is significantly smaller. Since crops 2 and 3 are both paid time plus pieces, these differences are not driven by the different contract types.

To understand this source of heterogeneity, we first explore whether worker assignment to crop may explain these patterns. To assess this, we run a regression to predict working on crop 2, limiting our sample to days when only crop 2 or 3 is harvested (since crop 1 is harvested in a different time period). As shown in column 5, gender is related to crop assignment: females are more likely to select into crop 2. Given that females are less affected by ozone, this suggests that gender selection into crops may explain some of this heterogeneity. Based on estimates from columns 3–5, however, gender selection can only explain 7 percent of the crop heterogeneity, suggesting that other factors must explain the differential effects by crop.<sup>26</sup> Importantly, ozone is not related to crop assignment, confirming that our estimates represent a valid estimate of the average treatment effect across the crops.

One explanation for this heterogeneity may be the differing physical demands placed on workers across crops. While crops 2 and 3 (grapes) are trellised such that harvestable fruit is waist to shoulder height, crop 1 (blueberries) grows closer to the ground, which requires considerable bending for workers and thus requires more energy to harvest. Within grapes, the crop 2 varietal is a delicate one that requires a slower and more careful harvest to avoid fruit damage, thus placing less physical demands on workers. Therefore, our findings that crop 1, which places the greatest physical demands on workers, is most affected by ozone and crop 2, which places the least physical demands, is least affected is consistent with laboratory studies (discussed in Section II) that find lung functioning impairment due to ozone is exacerbated by exercise.

## VI. Conclusion

In this paper, we merge a unique dataset on individual-level daily harvest rates for agricultural workers with data on environmental conditions to assess the impact of ozone pollution on worker productivity. We find that a 10 ppb change in average ozone exposure results in a significant and robust 5.5 percent change in agricultural worker productivity. Importantly, this environmental productivity effect suggests

<sup>25</sup>Despite the smaller impact of ozone for females, the coefficient on gender reveals that female productivity is considerably lower than male productivity on average. As discussed in Table 1, gender is not reported for roughly 19 percent of the sample.

<sup>26</sup>We obtain this estimate of 7 percent by multiplying the differential effect of ozone by gender (0.04) by the selection into crop 2 (0.257), and dividing it by the amount of heterogeneity (0.149).

that common characterizations of environmental protection as purely a tax on producers and consumers to be weighed against the consumption benefits associated with improved environmental quality may be misguided. Environmental protection can also be viewed as an investment in human capital, and its contribution to firm productivity and economic growth should be incorporated in the calculus of policymakers.

Our results also speak to the ongoing debates on ozone policy. Ozone pollution continues to be a pervasive environmental issue throughout much of the world. Debates over the optimal level of ozone have ensued for many years, and current efforts to strengthen these standards remain contentious. Defining regulatory standards depends, in part, on the benefits associated with avoided exposure, which has traditionally been estimated through a focus on high-visibility health effects such as hospitalizations. The labor productivity impacts measured in this paper help make these benefits calculations more complete. Our results indicate that ozone, even at levels below current air-quality standards in most of the world, has significant negative impacts on worker productivity, suggesting that the strengthening of regulations on ozone pollution would yield additional benefits.

These impacts of ozone on agricultural workers are also important in their own right. A back-of-the-envelope calculation that applies the environmental productivity effect estimated in the Central Valley of California to the whole of the United States suggests that the 10 ppb reduction in the ozone standard currently being considered by EPA would translate into an annual cost savings of approximately \$700 million in labor expenditure.<sup>27</sup> In the developing world, where national incomes depend more heavily on agriculture, these productivity effects are likely to have a much larger impact on the economy and the well-being of households. Nearly 1.1 billion individuals—35 percent of the active labor force—work in the agricultural sector worldwide (International Labour Organization 2011). The impacts of ozone may be especially large in countries like India, China, and Mexico, where rapid industrial growth and automobile penetration contribute precursor chemicals that contribute to substantially higher levels of ozone pollution.

While the impacts of ozone on agricultural productivity are large, the generalizability of these findings to other pollutants and industries is unclear. Agricultural workers face considerably higher levels of exposure to pollution than individuals who work indoors. That said, roughly 11.8 percent of the US labor force works in an industry with regular exposure to outdoor conditions, and this figure is much higher for middle- and lower-income countries (Graff Zivin and Neidell forthcoming). Moreover, many forms of outdoor pollution diminish indoor air quality as well. For example, indoor penetration of fine particulate matter ranges from 38–94 percent for typical residential homes in the United States (Abt et al. 2000). Examining the generalizability of the environmental productivity effect estimated in this paper to other pollutants and industries represents a fruitful area for future research.

<sup>27</sup> Total labor expenditure in US agriculture was approximately \$26.5 billion in 2007 (United States Department of Agriculture 2009). Ozone season in California runs from April through October. Using the conservative assumption that the seasonal distribution of agricultural labor expenditure is flat (it is likely lower in winter) yields a total annual expenditure of \$13.25 billion that is exposed to ozone productivity risk. The calculation assumes that the new standard shifts the entire distribution of ozone down by 10ppb and not just values that exceed air quality standards.

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Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 10/9/2015 6:52:54 PM  
**To:** Albritton, Jason (EPW) [Jason\_Albritton@epw.senate.gov]  
**Subject:** Re: Confidential - For Review

Will do.

Sent from my iPhone

On Oct 9, 2015, at 2:44 PM, Albritton, Jason (EPW) <Jason\_Albritton@epw.senate.gov> wrote:

Can EPA provide TA on the proposed amendment to TSCA below? We would like to know the impacts of this change.

Thanks.

Current section 6(e)(2)(A) and (B) in TSCA with suggested changes in underline/strikeout:

(2)(A) Except as provided under subparagraph (B), effective one year after the effective date of this Act no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) After January 1, 201X no person may manufacture, process, or distribute in commerce or use inadvertently generated polychlorinated biphenyls above 1 part per billion previously authorized by the Administrator by rule. The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of ~~any~~ polychlorinated biphenyls above 1 part per billion in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

Jason Albritton

Senior Policy Advisor

Senate Committee on Environment and Public Works

Senator Barbara Boxer, Ranking Member

456 Dirksen Senate Office Building

Tel: 202-224-8832

Fax: 202-224-1273

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 10/13/2015 2:44:50 PM  
**To:** 'Albritton, Jason (EPW)' [Jason\_Albritton@epw.senate.gov]  
**Subject:** RE: Confidential - For Review

Will check. I know folks were working on it, but was going to be late today/tomorrow morning. I'll see if this afternoon is possible.

---

**From:** Albritton, Jason (EPW) [mailto:Jason\_Albritton@epw.senate.gov]  
**Sent:** Tuesday, October 13, 2015 10:25 AM  
**To:** Vaught, Laura  
**Subject:** RE: Confidential - For Review

Can we get feedback to day on this?

Thanks.

---

**From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]  
**Sent:** Friday, October 09, 2015 4:58 PM  
**To:** Albritton, Jason (EPW)  
**Subject:** RE: Confidential - For Review

BTW - lots of people were out this afternoon for the long weekend, so will be early next week when we loop back.

---

**From:** Albritton, Jason (EPW) [mailto:Jason\_Albritton@epw.senate.gov]  
**Sent:** Friday, October 09, 2015 2:44 PM  
**To:** Vaught, Laura  
**Subject:** Confidential - For Review

Can EPA provide TA on the proposed amendment to TSCA below? We would like to know the impacts of this change.

Thanks.

Current section 6(e)(2)(A) and (B) in TSCA with suggested changes in underline/strikeout:

(2)(A) Except as provided under subparagraph (B), effective one year after the effective date of this Act no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) After January 1, 201X no person may manufacture, process, or distribute in commerce or use inadvertently generated polychlorinated biphenyls above 1 part per billion previously authorized by the Administrator by rule. The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyls above 1 part per billion in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

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Senate Committee on Environment and Public Works

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Tel: 202-224-8832  
Fax: 202-224-1273

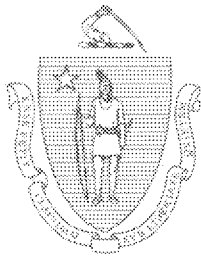
Message

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**From:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Sent:** 3/12/2015 11:48:00 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]  
**Subject:** Mass AG letter  
**Attachments:** 03-12-15AG Ltr Sen Markey SB697 3 12 2015.pdf

Laura - pls see attached.

Thanks  
Michal



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
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March 12, 2015

The Honorable Edward J. Markey  
Senate Environment and Public Works Committee  
218 Russell Senate Office Building  
Washington, DC 20510

Re: S.B. 697

Dear Senator Markey:

I write to express my deep concerns regarding the preemption provisions in the *Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act*, introduced yesterday afternoon, the latest iteration of the important toxics reform work that Senator Frank Lautenberg began when he introduced the Kid-Safe Chemicals Act in the 110<sup>th</sup> Congress. On the crucial issue of preserving our state's abilities to protect the health and safety of the citizens within our borders, the sole focus of this letter, the bill strays far from a bill that can adequately protect our citizens from the potential risks that may be posed by certain toxic chemicals in commerce.

My Office received a copy of the bill late last week, and, with its introduction this week, we continue to review the measure. However, we understand that the bill may be on an accelerated track for a vote in the 114<sup>th</sup> Congress. Therefore, I write you now regarding the effect of the proposed preemption provisions and the serious concerns I have regarding the ability of Massachusetts' public health and environmental agencies to continue to do their important, and at times, groundbreaking work protecting our citizens from potentially risky chemicals if those proposed provisions are allowed to stand.

While I strongly support efforts to modernize the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, *et seq.* ("TSCA"), enacted by Congress as the primary means to regulate the production, use and disposal of industrial chemicals (except for those used in pesticides and in firearms and ammunition, and those under U.S. Food and Drug Administration authority), this effort cannot compromise the ability of states like Massachusetts to use our agencies' expertise and experience to address the potential public health risks posed by some chemicals.

As it exists today, TSCA reflects an understanding that we are all better served when states work as partners with the federal government to enhance federal authority and to protect state interests when such action does not unduly burden interstate commerce, allowing states to

identify emerging risks and drive innovations to reduce or eliminate those risks. Under existing law, the possibility of preemption does not arise until the federal government has acted to protect against a risk of injury to health or the environment. TSCA, 15 U.S.C. § 2617(a)(2)(B). And once the United States Environmental Protection Agency has acted to regulate a chemical, states still may adopt new laws or continue to enforce existing laws regarding the same chemical and addressing the same risk – without a waiver – if the state requirement is identical to the federal standard (and therefore the state may enforce federal standards under state law), or if the state acts to ban a chemical for in-state use (other than for use in manufacturing or processing). Further, under existing law, the Administrator may grant a state's application for a waiver from preemption for state regulations that are stricter than the federal standard and that do not unduly burden interstate commerce. TSCA, 15 U.S.C. § 2617(b).

I agree with the conclusion set forth in last week's letter from the California Attorney General to Senator Boxer of your committee, that the issue of most pressing concern regarding the preemption language in the bill is timing: state requirements would be displaced long before any federal ones take effect. Under Section 18(b), any new state chemical restrictions would be preempted on "the date on which the Administrator commences a safety assessment under section 6." Because section 6(a) would provide USEPA with up to three years to conduct its safety assessment, with two more years allowed to promulgate a final regulation, and up to an additional two years to extend the rulemaking process before it is final, the bill allows for up to seven years, plus an additional period of time allowed for the regulated entity to come into compliance. As a result, for that entire period, any new state chemicals restrictions that do not predate the statute would be unenforceable, leaving an inexplicable regulatory vacuum for a chemical that the state and federal government have recognized as potentially high risk—and indeed have been designated "high priority" based on the health or environmental threats they pose.

The preemption provisions in the bill would also undermine the efforts of Massachusetts and other states to work with the federal government and on our own when the federal government is unwilling or unable to act, to protect our citizens from the risks associated with chemicals that may pose significant risk to our public health and the environment. For example, section 18(d)(1)(C)(ii)(I) of the bill would appear to eliminate the state's ability to co-enforce federal TSCA requirements, by precluding states from adopting a chemical rule or regulation that "is already required by a decision by the Administrator . . .," thus depriving Massachusetts enforcement authorities the opportunity to protect our citizens from the risks identified by the federal government as requiring enforcement action.

The bill also includes unduly burdensome standards for the state to obtain waivers from USEPA for state regulations that are stricter than the federal standard and do not unduly burden interstate commerce. To obtain such a waiver under the language of the current bill, a state like Massachusetts would need to demonstrate that "compelling State or local conditions warrant granting the waiver." Section 18(f)(1). To the extent this language is interpreted to require a showing that the chemical would pose a threat unique to the citizens of the state seeking the waiver, such a burden generally would be difficult to meet under any circumstances, given that risk from exposure to a particular toxic chemical generally does not vary from one location to the next.

The Commonwealth of Massachusetts has long been recognized as a leader in toxics control regulation. The Massachusetts Toxics Use Reduction Act, Mass. General Laws ch. 211 ("MA TURA"), enacted in 1989, requires Massachusetts companies that use large quantities of specific toxic chemicals to evaluate and plan for pollution prevention opportunities, implement them if practical, and measure and report their results on an annual basis. They must also evaluate their efforts and update their toxics use reduction plans every other year. The statute, which garnered the support of both industry and environmental groups, committed Massachusetts to:

- Reduce the generation of toxic waste by 50 percent statewide (this was accomplished by 1998);
- Establish toxics use reduction (TUR) as the preferred means for achieving compliance with federal and state environmental, public health and work safety laws and regulations;
- Provide and maintain competitive advantages for Massachusetts businesses, both large and small, while advancing innovation in cleaner production techniques;
- Enhance and strengthen environmental law enforcement across the state; and
- Promote coordination and cooperation among all state agencies that administer toxics-related programs.

After 15 years of successful program implementation, major amendments to TURA were signed into law by Governor Mitt Romney in 2006. These amendments:

- Streamlined the reporting and planning requirements;
- Established categorization of chemicals as high hazard and low hazard with different reporting thresholds and fees; and
- Provided options for resource conservation planning (e.g., energy, water, materials) and environmental management systems (EMSs) to supplement toxics use reduction plans.

We are very concerned that the scope of preemption in the bill may be used to defeat successful and important toxics use reduction programs, like MA TURA. Although Section 18(d)(1)(B) provides that the general preemption provisions "shall not apply to a statute or administrative action . . . applicable to a specific chemical substance that . . . implements a reporting, monitoring, or other information collection obligation for the chemical substance not otherwise required by [USEPA] or required under any other Federal law . . .," this exception may not be sufficiently clear or broad to protect multi-faceted programs like those developed pursuant to MA TURA.

We are also concerned about other possible unintended consequences of the severe limitations on states' abilities to regulate potentially hazardous chemicals under the scheme reflected in the bill, particularly in light of the potentially expansive preemption of state action related to water quality, air quality, or waste treatment or disposal, if the statutory or administrative action is "inconsistent with the action of the Administrator." Section 18(d)(1)(C)(ii)(II). For example, following intensive scientific and stakeholder review, Massachusetts regulates certain contaminants in wastewater discharges not otherwise required to be regulated under federal law, and the state's water quality standards for chemicals such as

perchlorate, a chemical found in blasting agents, fireworks, military munitions and other manufacturing processes, and linked to interference with thyroid function, have been adopted to protect against hazards related to these chemicals. Although we understand that Congress may not intend to interfere with these important protections, the TSCA preemption scheme as drafted is confusing and could be subject to an interpretation designed to defeat these types of protections as well.

As our experience over the past few decades demonstrates, industry is fully capable of addressing the concerns of both the federal government and state governments with respect to any chemical it chooses to bring to market. It has done so without undue burden or cost, and the benefits accruing to the public have been substantial. Any suggestion that retaining the existing preemption scheme under TSCA will lead to an unmanageable conflict among state requirements is misplaced. In the nearly 40 years since TSCA was enacted, states have been regulating chemical safety, and the U.S. chemical industry has retained its leadership in chemicals research and manufacturing.

The proper legislative balance would provide that Massachusetts and our sister states are able to continue to enact a higher level of protection so long as it does not unduly burden interstate commerce. Unfortunately, the bill fails to strike the appropriate balance. My Office will continue to work with our partners in other states to preserve states' rights in the face of the overly broad preemption provisions in the bill.

I look forward to continuing to work with you on this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maura Healey", written in a cursive style.

Maura Healey  
Massachusetts Attorney General

cc: The Honorable Elizabeth Warren

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 3/25/2015 8:46:32 PM  
**To:** 'Zipkin, Adam (Booker)' [Adam\_Zipkin@booker.senate.gov]  
**Subject:** RE: TSCA reform principles doc

That works.

---

**From:** Zipkin, Adam (Booker) [mailto:Adam\_Zipkin@booker.senate.gov]  
**Sent:** Wednesday, March 25, 2015 4:43 PM  
**To:** Vaught, Laura  
**Subject:** RE: TSCA reform principles doc

Could I call at 5?

---

**From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]  
**Sent:** Wednesday, March 25, 2015 4:27 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** RE: TSCA reform principles doc

Adam - if you happen to be around and have a minute to touch base, give me a call at 564-0304

---

**From:** Zipkin, Adam (Booker) [mailto:Adam\_Zipkin@booker.senate.gov]  
**Sent:** Wednesday, March 25, 2015 12:05 PM  
**To:** Vaught, Laura  
**Subject:** RE: TSCA reform principles doc

Thanks!

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**From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]  
**Sent:** Wednesday, March 25, 2015 12:00 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** Re: TSCA reform principles doc

Hi Adam - sorry it has been so hard to connect. Jim is on travel today/this week, but let me see what we can figure out.

Sent from my iPhone

On Mar 25, 2015, at 11:05 AM, Zipkin, Adam (Booker) <Adam\_Zipkin@booker.senate.gov> wrote:

Hi Laura. Attached is a draft red-line of the current Udall-Vitter bill that I am working on for my boss and other EPW Dems to present to Sens Udall/Vitter as containing the changes needed in order for these Senators to support the bill. Please treat as confidential. Things are moving quickly, is there any chance Mr. Jones and/or any other EPA staff could review and do a TA call with me this afternoon? The amount of changes are limited, and can be summarized as follows:

1. Preemption

- Consistent with existing law, timing of preemption for High Priority Chemicals is amended to occur at the implementation date of EPA action on a chemical (current bill has high priority

preemption starting as soon as EPA starts reviewing a high priority chemical, rather than when EPA finishes).

2. Co-enforcement

- Consistent with existing law, bill is amended to allow states to enact and co-enforce identical laws (current bill does not allow).

3. Judicial Review

- Bill is amended to allow full judicial review of chemicals that EPA designates as low priority (current bill only allows states to challenge).

4. Articles (i.e. consumer products)

- Bill is amended to delete out this newly inserted section which Mr. Jones testified is inconsistent with statement of administration priorities.

5. Animal Testing

- Language is added to minimize animal testing where EPA Administrator determines scientifically reliable alternatives exist that would generate equivalent information.

6. Pre-emption of State Clean Air/Clean Water Laws

- Language is tweaked to try to make clear that this pre-emption should not occur.

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**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]

**Sent:** Tuesday, March 24, 2015 11:13 AM

**To:** Zipkin, Adam (Booker)

**Subject:** RE: TSCA reform principles doc

My morning is a little crazy - anything this afternoon that works?

---

**From:** Zipkin, Adam (Booker) [[mailto:Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)]

**Sent:** Monday, March 23, 2015 8:47 PM

**To:** Vaught, Laura

**Subject:** RE: TSCA reform principles doc

Thanks Laura - I could do 10am or 11:30 if either of those work for you tmrw.

---

**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]

**Sent:** Monday, March 23, 2015 5:24 PM

**To:** Zipkin, Adam (Booker)

**Subject:** RE: TSCA reform principles doc

Thanks Adam - and sorry today got away from me, and now I have to run out for something, but let's connect tomorrow?

---

**From:** Zipkin, Adam (Booker) [[mailto:Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)]

**Sent:** Friday, March 20, 2015 5:21 PM

**To:** Vaught, Laura

**Subject:** RE: TSCA reform principles doc

Hi Laura FYI Jim Jones did great at the hearing. Do you have a few minutes Monday am to talk follow up?

---

**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]  
**Sent:** Tuesday, March 17, 2015 3:47 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** Re: TSCA reform principles doc

Give me 2 minutes to get back to my desk and then yes.

Sent from my iPhone

On Mar 17, 2015, at 3:45 PM, Zipkin, Adam (Booker) <[Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)> wrote:

Laura any chance you could talk now? Otherwise I have a 4pm meeting and then open 4:30-5:30.

---

**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]  
**Sent:** Tuesday, March 17, 2015 2:59 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** RE: TSCA reform principles doc

Sure.

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**From:** Zipkin, Adam (Booker) [[mailto:Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)]  
**Sent:** Tuesday, March 17, 2015 2:58 PM  
**To:** Vaught, Laura  
**Subject:** Re: TSCA reform principles doc

Can u call my cell after your 3pm mtg 973.204.7917?

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**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]  
**Sent:** Tuesday, March 17, 2015 02:48 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** RE: TSCA reform principles doc  
Sounds good. I'm around until a little after 3 when I have to go to a meeting, but I don't think will take long.

---

**From:** Zipkin, Adam (Booker) [[mailto:Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)]  
**Sent:** Tuesday, March 17, 2015 2:38 PM  
**To:** Vaught, Laura  
**Subject:** Re: TSCA reform principles doc

I will try u in 5 min

---

**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]  
**Sent:** Tuesday, March 17, 2015 12:27 PM  
**To:** Zipkin, Adam (Booker)  
**Subject:** RE: TSCA reform principles doc  
Hi Adam - happy to connect on these when you're free. My direct is 564-0304

---

**From:** Zipkin, Adam (Booker) [[mailto:Adam\\_Zipkin@booker.senate.gov](mailto:Adam_Zipkin@booker.senate.gov)]  
**Sent:** Tuesday, March 17, 2015 9:20 AM  
**To:** Vaught, Laura  
**Subject:** RE: TSCA reform principles doc

Laura good morning -- attached are draft questions. Could we do a call to discuss once you have a chance to review on your end? Thanks! Adam

---

**From:** Vaught, Laura [<mailto:Vaught.Laura@epa.gov>]

**Sent:** Monday, March 16, 2015 11:17 AM

**To:** Zipkin, Adam (Booker)

**Subject:** FW: TSCA reform principles doc

Hi Adam - here are the Administration's TSCA principles that were announced in 2009.

Message

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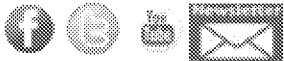
**From:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Sent:** 3/16/2015 6:43:40 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]  
**CC:** Poirier, Bettina (EPW) [Bettina\_Poirier@epw.senate.gov]  
**Subject:** FW: New York AG TSCA Letter  
**Attachments:** S.697.Letter.NYSenators.3.1.13.FINAL.PDF

Laura - fyi - thought you would want to take a look.

Michal

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
218 Russell Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey





STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

March 13, 2015

The Honorable Charles E. Schumer  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Kirsten E. Gillibrand  
United States Senate  
478 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senators Schumer and Gillibrand:

I am writing to express my opposition to the Frank R. Lautenberg Chemical Safety for the 21st Century Act, S. 697, as presently drafted. S. 697 was introduced this week as an amendment to the Toxic Substances Control Act of 1976 ("TSCA"), our national law to protect our citizens and the environment from the risks posed by chemicals and chemical mixtures. In particular, I oppose S. 697's broadly expanded limitations on the ability of New York and other states to take appropriate action under state laws to protect against these risks.

In contrast to the existing law, S. 697 would prevent states from adopting new laws or regulations, or taking other administrative action, "prohibiting or restricting the manufacture, processing, distribution in commerce or use" of a chemical substance deemed by the U.S. Environmental Protection Agency ("EPA") to be a "high-priority" for federal review even before any federal restrictions have been established. As a result, a void would be created where states would be prevented from acting to protect their citizens and the environment from those chemicals even though federal restrictions may not be in place for many years. S. 697 also eliminates two key provisions in the existing law that preserve state authority to protect against dangerous chemicals. One is the provision that provides for "co-enforcement" – allowing states to adopt and enforce state restrictions that are identical to federal restrictions in order to provide for additional enforcement of the law. The second is the provision that allows states to ban in-state use of dangerous chemicals.

The goal of TSCA is vitally important: to establish necessary and appropriate restrictions on the manufacture and use of chemicals that present an unreasonable risk of injury to human

health or the environment. I strongly support this goal, and recognize the essential contribution that TSCA could make in ensuring the adequate protection of public health and the environment from toxic chemicals. Unfortunately, in practice, TSCA has largely failed to live up to its goal and, as a result, I welcome efforts to reform this important statute.

However, I cannot support S. 697's broad expansion of limitations on the authority of states to protect our citizens from the health and environmental risks posed by toxic chemicals within our states in the name of "reform." In fact, as detailed below, I believe that, rather than bringing TSCA closer to attaining its goal, the draft legislation's greatly expanded limitations on state action would move that goal further out of reach.

## **I. Preemption of State Action Under TSCA**

Historically and currently, New York and other states have been leaders in protecting public health and the environment from toxic chemicals. That exercise of traditional state "police powers" has allowed states to protect their citizens and natural resources, and serve as laboratories for nationwide solutions for threats to human health and the environment.

For example, in 1970 New York banned use of the insecticide DDT, which was devastating many bird populations, including American bald eagles, peregrine falcons, brown pelicans, and ospreys. Two years later, EPA followed New York's lead. Twenty years later, the American bald eagle was up-listed from an endangered species to a threatened species.

More recently, in 2009, New York banned the purchase and incineration of coal "fly ash," a waste product of burning coal to produce electricity. Fly ash is rich in mercury, a highly toxic compound that causes nervous system damage, neurological problems, birth defects, and developmental delays. In 2014, EPA promulgated a final rule on fly ash and other coal combustion waste products under the Resource Conservation and Recovery Act.

Additionally, New York has adopted laws and regulations restricting the sale or use of products containing harmful chemicals. Those laws and regulations play a critical role in protecting the health and welfare of our citizens and the natural resources of New York State. These laws and regulations include:

- A prohibition under General Business Law, § 396-k, on the import, manufacture, sale or distribution of toxic children's products, and authorization under Executive Law § 63(12) for my office to conduct investigations into violations of that and other laws, and then prosecute and to resolve such violations by agreement. My office has taken recent action under these laws to ensure that retailers in New York do not sell toys and other articles for children that contain dangerous levels of toxic chemicals.
- A ban on bisphenol A ("BPA") in child care products, including pacifiers, baby bottles, and sippy cups. N.Y. Env'tl. Conserv. Law § 37-0501 et seq. BPA leaches into liquids

and foods and has been shown to mimic the behavior of estrogens in the human body, causing changes in the onset of puberty and reproductive functioning.

- A ban on flame retardant tris(2-chloroethyl) phosphate (“TRIS”) in child care products, including toys, car seats, nursing pillows, crib mattresses, and strollers. N.Y. Env’tl. Conserv. Law § 37-0701 et seq. The Consumer Products Safety Commission classifies TRIS as a probable human carcinogen. Studies have shown that young children are often the group most highly exposed to TRIS, and estimate that children can ingest up to ten times as much of this chemical as adults do because of their tendency to put their hands and other objects into their mouths.
- Restrictions on the concentration of brominated flame retardants (pentabrominated and octabrominated diphenyl ethers) in products manufactured, processed or distributed in New York. N.Y. Env’tl. Conserv. Law § 37-0111. Pentabrominated diphenyl ether (“PBDE”) has been correlated with lower birth weight in newborns. Animal studies indicate that pre- and post-natal exposures to PBDE may cause long-lasting behavioral alterations and can affect motor activity and cognitive behavior.
- Restrictions on the use of lead, cadmium, mercury, and hexavalent chromium in inks, dyes, pigments, adhesives, stabilizers, or other additives in product packaging. N.Y. Env’tl. Conserv. Law § 37-0205 et seq. EPA has determined that lead and mercury are probable human carcinogens, while cadmium and chromium are known human carcinogens. Exposure to high levels of any of these heavy metals can permanently damage the brain, kidneys, and other vital organs.
- A de facto ban on the use of n-propyl bromide in dry cleaning. See “Approved Alternative Solvents for Dry Cleaning” at <http://www.dec.ny.gov/chemical/72273.html>. N-propyl bromide has been found to cause sterility in both male and female test animals, and harms developing fetuses. It can also damage nerves, causing weakness, pain, numbness, and paralysis. As a result, New York will not issue an Air Facility Registration to any facility proposing to use n-propyl bromide as an alternative dry cleaning solvent as it is not an approved alternative solvent. New York City also bans n-propyl bromide under its fire code because of its flammability. N.Y.C. Admin. Code §§ 27-426, 27-427.

These examples underscore the importance of maintaining the complementary, symbiotic relationship between federal and state chemical regulation in any TSCA reform. TSCA currently provides that a state may regulate any chemical unless and until EPA regulates the chemical under § 6. 15 U.S.C. §§ 2617(a)(1) and (a)(2)(B). Once EPA regulates a chemical because it has found that the chemical presents an unreasonable risk, TSCA provides that a state may not enforce an existing regulation or establish a new regulation “which is designed to protect against such risk” after the effective date of that federal regulation. *Id.* § 2617(a)(2)(B). However, existing § 18(a)(2)(B) exempts a state restriction on a chemical from preemption if the state

restriction is: (1) identical to EPA's restriction; (2) enacted pursuant to another federal law; or (3) a complete ban on in-state use of the chemical. *Id.* Thus, by allowing states to enact restrictions identical to EPA's, TSCA allows states to "co-enforce" the federal restrictions on toxic chemicals. In addition, subject to EPA approval, existing § 18(b) allows states to establish requirements to protect public health or the environment for a chemical if a state requirement provides a "significantly higher degree of protection" than the EPA requirement. *Id.* § 2617(b)(2).

## **II. Preemption of State Action Under S. 697**

### **a. High-Priority Chemicals**

S. 697 would greatly expand TSCA's scope of state preemption. Substantively, § 4A of the act as proposed would require EPA to categorize all existing chemicals as either "low priority" or "high priority." § 6 as proposed would require EPA to make safety assessments and determinations regarding high-priority chemicals and issue restrictions on high-priority chemicals that do not meet the safety standard because they present an unreasonable risk to of injury to health or the environment.

§ 18(a) as proposed in S. 697 would not preempt existing state restrictions on high-priority chemicals until EPA has either found that the chemical meets the safety standard or imposed restrictions on a chemical that does not meet the safety standard. It would also allow states to maintain existing restrictions or impose new restrictions on low-priority chemicals.<sup>1</sup>

However, under § 18(b) as proposed in S. 697, states would be preempted from imposing any new restrictions on a high-priority chemical once EPA starts its safety assessment. Thus, even though EPA has designated a chemical as high-priority under proposed § 4A(b)(3) because it has the "potential for high hazard or widespread exposure," states would not be able to protect their citizens and environment from that chemical even though any federal restrictions on it are likely years away. Under proposed § 6(a), EPA may take up to three years after a chemical is

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<sup>1</sup> Specifically, § 18(a) would provide that a state may not establish a new restriction or enforce an existing restriction on a chemical "found to meet the safety standard and consistent with the scope of the determination made under section 6." Section 6 applies only to high-priority chemicals. When a chemical is categorized as low-priority under § 4A(b) because it is "likely to meet the applicable safety standard," no finding whether it meets the standard is required. I note, however, that low-priority status is not necessarily permanent. Under proposed § 4A(b)(9)(A), states must notify EPA of proposed administrative actions, enacted legislation and final administrative action regarding low-priority chemicals, and under proposed §§ 4A(b)(8)(A) and 4A(a)(3)(A)(iii)(III), EPA could respond to such notification by re-designating a low-priority substance as a high-priority one.

categorized as high-priority to conduct a safety assessment and up to two years after a safety assessment is completed to issue restrictions on a chemical. Those deadlines may also be extended by an aggregate length of no more than two years.

Thus, assuming no additional unauthorized delays, S. 697 itself allows up to seven years between a chemical's high-priority designation and its federal restriction – a period during which states are denied the ability to restrict the chemical in order to protect the health of their citizens and the environment. And history suggests that additional, unauthorized delays will indeed occur.<sup>2</sup>

**b. Additional Forms of Preemption**

S. 697 also would eliminate two provisions of the existing law that preserve the ability of states to take action under their own laws. Under § 18(d)(1)(C)(ii)(I) as proposed, state restrictions identical to restrictions issued by EPA under TSCA would no longer be exempt from preemption. Without this exemption, the only means for states to enforce EPA's restrictions on toxic chemicals in their states would be through a citizens' suit in federal court. That would eliminate critical state enforcement tools – state administrative proceedings and judicial actions in state courts – that work in tandem with federal enforcement in states all across the nation to protect our air, water, lands, and citizens from toxic pollutants. Additionally, S. 697 would remove TSCA's current preemption exception for state bans on the in-state use of chemicals, which – as discussed above – has been an important part of New York's approach to safeguarding its citizens and natural resources from dangerous chemicals.

While § 18(d)(1)(C) as proposed would add an exception for state restrictions on chemicals relating to air quality, water quality, or waste treatment or disposal, that exception would not cover restrictions that “impose a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance.” Some chemicals that cause air or water pollution can be controlled before they are emitted or discharged into the environment, and would arguably fit within this exception. However, the risks of many other harmful chemicals – particularly those that are highly toxic, or difficult to control or treat as pollutants – can be effectively reduced only by restricting their use, and such use restrictions by states would be preempted under S. 697.

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<sup>2</sup> I note, for example, that Congress amended TSCA in July 2010 by adding Subchapter VI that sets forth specific formaldehyde standards for composite wood products. Congress directed EPA, “[n]ot later than January 1, 2013,” to promulgate regulations to implement the standards. 15 U.S.C § 2697(d)(1). Presently, EPA anticipates promulgating the regulations by December 2015. See <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products#proposedrule>

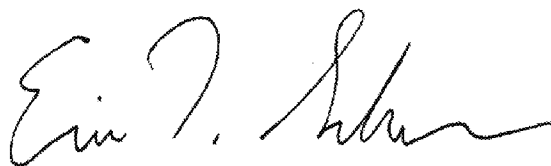
The Honorable Charles E. Schumer  
The Honorable Kirsten E. Gillibrand  
March 13, 2015  
Page 6 of 6

\* \* \*

In conclusion, I believe that achieving TSCA's goal of ensuring the adequate protection of public health and the environment from toxic chemicals is as important as ever. However, I oppose the provisions in S. 697 that would greatly expand the limits on state action under state law to provide protections against dangerous chemicals.

I offer the full assistance of my office to you and your colleagues to craft TSCA reform legislation that would improve federal regulation of toxic chemicals while preserving the traditional and critical role of states in protecting the health and welfare of their citizens and natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman". The signature is fluid and cursive, with the first name "Eric" and last name "Schneiderman" clearly distinguishable.

Eric T. Schneiderman  
Attorney General of New York

Message

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**From:** Black, Jonathan (Tom Udall) [Jonathan\_Black@tomudall.senate.gov]  
**Sent:** 9/29/2015 2:35:57 PM  
**To:** Bauserman, Trenton [Trenton\_D\_Bauserman@ceq.eop.gov]; Billingsley, Tara [Tara\_L\_Billingsley@who.eop.gov]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]  
**CC:** Karakitsos, Dimitri (EPW) [Dimitri\_Karakitsos@epw.senate.gov]  
**Subject:** Confidential updated language  
**Attachments:** EPA TA - Orion - EJMDD discussion draft - BB additions - (9-29-15) - redline - v.11.0.doc

Please be aware that this is not final, but it represents the latest package that has been shared among Senate lead offices.

We are still trying to resolve some issues (some non-germane and other very minor).

But it is very possible that the bill could be put on the hotline and we move to TSCA quickly. We want you to be able to issue the SAP.

Purpose: In the nature of a substitute.

S. 697

To amend the Toxic Substances Control Act to reauthorize and modernize that Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY \_\_\_\_\_

Viz:

Strike all after the enacting clause and insert the following:

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Frank R. Lautenberg Chemical Safety for the 21st Century Act”.

## SEC. 2. FINDINGS, POLICY, AND INTENT.

Section 2(c) of the Toxic Substances Control Act (15 U.S.C. 2601(c)) is amended—

(1) by striking “It is the intent” and inserting the following:

“(1) ADMINISTRATION.—It is the intent”;

(2) in paragraph (1) (as so redesignated), by inserting “, as provided under this Act” before the period at the end; and

(3) by adding at the end the following:

“(2) REFORM.—This Act, including reforms in accordance with the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act—

“(A) shall be administered in a manner that—

“(i) protects the health of children, pregnant women, the elderly, workers, consumers, the general public, and the environment from the risks of harmful exposures to chemical substances and mixtures; and

“(ii) ensures that appropriate information on chemical substances and mixtures is available to public health officials and first responders in the event of an

1 emergency; and  
2 “(B) shall not displace or supplant common law rights of action or remedies for civil  
3 relief.”.

## 4 SEC. 3. DEFINITIONS.

5 Section 3 of the Toxic Substances Control Act (15 U.S.C. 2602) is amended—

6 (1) by redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14)  
7 as paragraphs (5), (6), (7), (8), (9), (10), (12), (13), (17), (18), and (19), respectively;

8 (2) by inserting after paragraph (3) the following:

9 “(4) CONDITIONS OF USE.—The term ‘conditions of use’ means the intended, known, or  
10 reasonably foreseeable circumstances the Administrator determines a chemical substance is  
11 manufactured, processed, distributed in commerce, used, or disposed of.”;

12 (3) by inserting after paragraph (10) (as so redesignated) the following:

13 “(11) POTENTIALLY EXPOSED OR SUSCEPTIBLE POPULATION.—The term ‘potentially  
14 exposed or susceptible population’ means 1 or more groups—

15 “(A) of individuals within the general population who may be—

16 “(i) differentially exposed to chemical substances under the conditions of use;  
17 or

18 “(ii) susceptible to greater adverse health consequences from chemical  
19 exposures than the general population; and

20 “(B) that when identified by the Administrator may include such groups as infants,  
21 children, pregnant women, workers, and the elderly.”; and

22 (4) by inserting after paragraph (13) (as so redesignated) the following:

23 “(14) SAFETY ASSESSMENT.—The term ‘safety assessment’ means an assessment of the  
24 risk posed by a chemical substance under the conditions of use, integrating hazard, use, and  
25 exposure information regarding the chemical substance.

26 “(15) SAFETY DETERMINATION.—The term ‘safety determination’ means a determination  
27 by the Administrator as to whether a chemical substance meets the safety standard under the  
28 conditions of use.

29 “(16) SAFETY STANDARD.—The term ‘safety standard’ means a standard that ensures,  
30 without taking into consideration cost or other nonrisk factors, that no unreasonable risk of  
31 injury to health or the environment will result from exposure to a chemical substance under  
32 the conditions of use, including no unreasonable risk of injury to—

33 “(A) the general population; or

34 “(B) any potentially exposed or susceptible population that the Administrator has  
35 identified as relevant to the safety assessment and safety determination for a chemical  
36 substance.”.

## 37 SEC. 4. POLICIES, PROCEDURES, AND GUIDANCE.

The Toxic Substances Control Act is amended by inserting after section 3 (15 U.S.C. 2602) the following:

### “SEC. 3A. POLICIES, PROCEDURES, AND GUIDANCE.

“(a) Definition of Guidance.—In this section, the term ‘guidance’ includes any significant written guidance of general applicability prepared by the Administrator.

“(b) Deadline.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop, after providing public notice and an opportunity for comment, any policies, procedures, and guidance the Administrator determines to be necessary to carry out sections 4, 4A, 5, and 6, including the policies, procedures, and guidance required by this section.

“(c) Use of Science.—

“(1) IN GENERAL.—The Administrator shall establish policies, procedures, and guidance on the use of science in making decisions under sections 4, 4A, 5, and 6.

“(2) GOAL.—A goal of the policies, procedures, and guidance described in paragraph (1) shall be to make the basis of decisions clear to the public.

“(3) REQUIREMENTS.—The policies, procedures, and guidance issued under this section shall ~~describe the manner in which the Administrator shall ensure that~~ **ensure that**—

“(A) decisions made by the Administrator—

“(i) are based on information, procedures, measures, methods, and models employed in a manner consistent with the best available science;

“(ii) take into account the extent to which—

“(I) assumptions and methods are clearly and completely described and documented;

“(II) variability and uncertainty are evaluated and characterized; and

“(III) the information has been subject to independent verification and peer review; and

“(iii) are based on the weight of the scientific evidence, by which the Administrator considers all information in a systematic and integrative framework to consider the relevance of different information;

“(B) to the extent practicable and if appropriate, the use of peer review, standardized test design and methods, consistent data evaluation procedures, and good laboratory practices will be encouraged;

“(C) a clear description of each individual and entity that funded the generation or assessment of information, and the degree of control those individuals and entities had over the generation, assessment, and dissemination of information (including control over the design of the work and the publication of information) is made available; and

“(D) if appropriate, the recommendations in reports of the National Academy of Sciences that provide advice regarding assessing the hazards, exposures, and risks of chemical substances are considered.

1 “(d) Existing EPA Policies, Procedures, and Guidance.—The policies, procedures, and  
2 guidance described in subsection (b) shall incorporate, ~~as appropriate, existing relevant hazard,~~  
3 ~~exposure, and risk assessment guidelines and methodologies, data evaluation and quality criteria,~~  
4 ~~testing methodologies, and other relevant guidelines and policies of the Environmental~~  
5 ~~Protection Agency.~~ **existing relevant policies, procedures, and guidance, as appropriate and**  
6 **consistent with this Act.**

7 “(e) Review.—Not later than 5 years after the date of enactment of the Frank R. Lautenberg  
8 Chemical Safety for the 21st Century Act, and not less frequently than once every 5 years  
9 thereafter, the Administrator shall—

10 “(1) review the adequacy of any policies, procedures, and guidance developed under this  
11 section, including animal, nonanimal, and epidemiological test methods and procedures for  
12 assessing and determining risk under this Act; and

13 “(2) after providing public notice and an opportunity for comment, revise the policies,  
14 procedures, and guidance if necessary to reflect new scientific developments or  
15 understandings.

16 “(f) Sources of Information.—In carrying out sections 4, 4A, 5, and 6, the Administrator shall  
17 take into consideration information relating to a chemical substance, including hazard and  
18 exposure information, under the conditions of use that is reasonably available to the  
19 Administrator, including information that is—

20 “(1) submitted to the Administrator pursuant to any rule, consent agreement, order, or  
21 other requirement of this Act, or on a voluntary basis, including pursuant to any request  
22 made under this Act, by—

23 “(A) manufacturers or processors of a substance;

24 “(B) the public;

25 “(C) other Federal departments or agencies; or

26 “(D) the Governor of a State or a State agency with responsibility for protecting  
27 health or the environment;

28 “(2) submitted to a governmental entity in any jurisdiction pursuant to a governmental  
29 requirement relating to the protection of health or the environment; or

30 “(3) identified through an active search by the Administrator of information sources that  
31 are publicly available or otherwise accessible by the Administrator.

32 “(g) Testing of Chemical Substances and Mixtures.—

33 “(1) IN GENERAL.—The Administrator shall establish policies ~~and~~, procedures, **and**  
34 **guidance** for the testing of chemical substances or mixtures under section 4.

35 “(2) GOAL.—A goal of the policies ~~and~~, procedures, **and guidance** established under  
36 paragraph (1) shall be to make the basis of decisions clear to the public.

37 “(3) CONTENTS.—The policies ~~and~~, procedures, **and guidance** established under  
38 paragraph (1) shall—

39 “(A) address how and when the exposure level or exposure potential of a chemical  
40 substance would factor into decisions to require new testing, subject to the condition

that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential; **and**

“(B) describe the manner in which the Administrator will determine that additional information is necessary to carry out this Act, including information relating to potentially exposed or susceptible populations;.

~~“(C) require the Administrator to~~ **“(4) EPIDEMIOLOGICAL STUDIES.—Before prescribing epidemiological studies of employees, the Administrator shall** consult with the Director of the National Institute for Occupational Safety and Health. ~~prior to prescribing epidemiologic studies of employees; and~~

~~“(D) require that prior to making a request or adopting a requirement for testing using vertebrate animals, the Administrator shall take into consideration, as appropriate and to the extent practicable, reasonably available—~~

~~“(i) toxicity information;~~

~~“(ii) computational toxicology and bioinformatics;~~

~~\* 1 “(iii) high-throughput screening methods and the prediction models of those methods; and~~

~~\* 2 “(iv) scientifically reliable and relevant alternatives to tests on animals that would provide equivalent information.~~

“(h) Safety Assessments and Safety Determinations.—

“(1) SCHEDULE.—

“(A) IN GENERAL.—The Administrator shall inform the public regarding the schedule **and the resources necessary** for the completion of each safety assessment and safety determination as soon as practicable after designation as a high-priority substance pursuant to section 4A.

“(B) DIFFERING TIMES.—The Administrator may allot different times for different chemical substances in the schedules under this paragraph, subject to the condition that all schedules shall comply with the deadlines established under section 6.

“(C) ANNUAL PLAN.—~~AT PLAN.—~~

**“(i) IN GENERAL.—At** the beginning of each calendar year, the Administrator shall **publish an annual plan.**

**“(ii) INCLUSIONS.—The annual plan shall—**

**“(I) identify** the substances subject to safety assessments and safety determinations to be completed that year;

**“(II) describe the status of each safety assessment and safety determination that has been initiated but not yet completed, including milestones achieved since the previous annual report; and**

**“(III) if the schedule for completion of a safety assessment and safety**

determination prepared pursuant to subparagraph (A) has changed,  
include an updated schedule for that safety assessment and safety  
determination.

“(2) POLICIES AND PROCEDURES FOR SAFETY ASSESSMENTS AND SAFETY  
DETERMINATIONS.—

“(A) IN GENERAL.—The Administrator shall establish, by rule, policies and  
procedures regarding the manner in which the Administrator shall carry out section 6.

“(B) GOAL.—A goal of the policies and procedures under this paragraph shall be to  
make the basis of decisions of the Administrator clear to the public.

“(C) MINIMUM REQUIREMENTS.—~~AT A MINIMUM, THE~~ **REQUIREMENTS.—The**  
policies and procedures under this paragraph ~~shall—~~ **shall, at a minimum—**

“(i) describe—

“(I) the manner in which the Administrator will identify informational  
needs and seek that information from the public;

“(II) the information (including draft safety assessments) that may be  
submitted by interested individuals or entities, including States; and

“(III) the criteria by which ~~that~~ information **submitted by interested**  
**individuals or entities** will be evaluated;

“(ii) ~~require the Administrator—~~ **that each draft and final safety assessment**  
**and safety determination of the Administrator include a description of—**

~~“(I)(aa) to define“(I)(aa) the scope of the safety assessment and safety~~  
~~determination to be conducted under section 6, including the hazards,~~  
~~exposures, and conditions of use of the chemical substance, and potentially~~  
~~exposed and susceptible populations that the Administrator expects to~~  
~~consider in a safety assessment; has identified as relevant; and~~

~~“(bb) to explain“(bb) the basis for the scope of the safety assessment and~~  
~~safety determination;~~

and

~~“(cc) to accept comments regarding the scope of the safety assessment and~~  
~~safety determination; and~~

~~“(II)(aa) to identify the items described in subclause (I) that the~~  
~~Administrator has considered in the final safety assessment; and~~

~~“(bb) to explain the basis for the consideration of those items;~~

~~“(iii) describe“(II) the manner in which aggregate exposures, or~~  
~~significant subsets of exposures, to a chemical substance under the~~  
~~conditions of use will be were considered, and explain the basis for that~~  
~~consideration in the final safety assessment;;~~

~~“(iv) require that each safety assessment and safety determination shall~~  
~~include—~~

1                   ~~“(I) a description of”~~**“(III) the weight of the scientific evidence of risk; and**

2                   ~~“(II) a summary of”~~**“(IV) the information regarding the impact on health**  
3                   and the environment of the chemical substance that was used to make the  
4                   assessment or determination, including, as available, mechanistic, animal  
5                   toxicity, and epidemiology studies;

6                   ~~“(v)”~~**“(iii) establish a timely and transparent process for evaluating whether new**  
7                   information submitted or obtained after the date of a final safety assessment or  
8                   safety determination warrants reconsideration of the safety assessment or safety  
9                   determination; and

10                  ~~“(vi)”~~**“(iv) when relevant information is provided or otherwise made available to**  
11                  the Administrator, ~~shall~~ **require the Administrator to** consider the extent of  
12                  Federal regulation under other Federal laws.

13                  **“(D) GUIDANCE.—**

14                  **“(i) IN GENERAL.—**Not later than 1 year after the date of enactment of the Frank  
15                  R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall  
16                  develop guidance to assist interested persons in developing their own draft safety  
17                  assessments and other information for submission to the Administrator, which  
18                  may be considered ~~at the discretion of~~ **by** the Administrator.

19                  **“(ii) REQUIREMENT.—**The guidance shall, at a minimum, address the quality of  
20                  the information submitted and the process to be followed in developing a draft  
21                  safety assessment for consideration by the Administrator.

22                  **“(i) Publicly Available Information.—**Subject to section 14, the Administrator shall—

23                   **“(1) make publicly available a nontechnical summary, and the final version, of each**  
24                   safety assessment and safety determination;

25                   **“(2) provide public notice and an opportunity for comment on each proposed safety**  
26                   assessment and safety determination; and

27                   **“(3) make public in a final safety assessment and safety determination—**

28                   **“(A) the list of studies considered by the Administrator in carrying out the safety**  
29                   assessment or safety determination; and

30                   **“(B) the list of policies, procedures, and guidance that were followed in carrying out**  
31                   the safety assessment or safety determination.

32                  **“(j) Consultation With Science Advisory Committee on Chemicals.—**

33                   **“(1) ESTABLISHMENT.—**Not later than 1 year after the date of enactment of this section,  
34                   the Administrator shall establish an advisory committee, to be known as the ‘Science  
35                   Advisory Committee on Chemicals’ (referred to in this subsection as the ‘Committee’).

36                   **“(2) PURPOSE.—**The purpose of the Committee shall be to provide independent advice  
37                   and expert consultation, on the request of the Administrator, with respect to the scientific  
38                   and technical aspects of issues relating to the implementation of this title.

39                   **“(3) COMPOSITION.—**The Committee shall be composed of representatives of such  
40                   science, government, labor, public health, public interest, animal protection, industry, and

other groups as the Administrator determines to be advisable, including, at a minimum, representatives that have specific scientific expertise in the relationship of chemical exposures to women, children, and other potentially exposed or susceptible populations.

“(4) SCHEDULE.—The Administrator shall convene the Committee in accordance with such schedule as the Administrator determines to be appropriate, but not less frequently than once every 2 years.

“(5) RELATIONSHIP TO OTHER LAW.—All proceedings and meetings of the Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

## SEC. 5. TESTING OF CHEMICAL SUBSTANCES OR MIXTURES.

(a) In General.—Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amended—

(1) by striking subsections (a), (b), (c), (d), and ~~(g)~~; **(e), and (g)**;

~~(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;~~

~~(3) in subsection (f) (as so redesignated)—~~

~~(A) by striking “rule” each place it appears and inserting “rule, testing consent agreement, or order”;~~

~~(B) by striking “under subsection (a)” each place it appears and inserting “under this subsection”; and~~

~~(C) in paragraph (1)—~~

~~(i) in subparagraph (A)(v), by inserting “, without taking into account cost or other nonrisk factors” after “the environment”; and~~

~~(ii) in subparagraph (B), in the last sentence, by striking “rulemaking”;~~

~~(4) in subsection (g) (as so redesignated)—~~ **(2) in subsection (f)—**

**(A) in the first sentence—**

**(i) by striking “from cancer, gene mutations, or birth defects”; and**

**(ii) by inserting “, without taking into account cost or other nonrisk factors” before the period at the end; and**

**(B) by striking the last sentence; and**

~~(5)(3) by inserting before subsection (f) (as so redesignated) the following:~~

“(a) Development of New Information on Chemical Substances and Mixtures.—

“(1) IN GENERAL.—The Administrator may require the development of new information relating to a chemical substance or mixture in accordance with this section if the Administrator determines that the information is necessary—

“(A) to review a notice under section 5(d) or to perform a safety assessment or safety determination under section 6;

1 “(B) to implement a requirement imposed in a consent agreement or order issued  
2 under section 5(d)(4) or under a rule promulgated under section 6(d)(3);

3 “(C) pursuant to section 12(a)(4); or

4 “(D) at the request of the implementing authority under another Federal law, to meet  
5 the regulatory testing needs of that authority.

6 “(2) LIMITED TESTING FOR PRIORITIZATION PURPOSES.—

7 “(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may  
8 require the development of new information for the purposes of section 4A.

9 “(B) PROHIBITION.—Testing required under subparagraph (A) shall not be required  
10 for the purpose of establishing or implementing a minimum information requirement.

11 “(C) LIMITATION.—The Administrator may require the development of new  
12 information pursuant to subparagraph (A) only if the Administrator determines that  
13 additional information is necessary to establish the priority of a chemical substance.

14 “(3) FORM.—The Administrator may require the development of information described in  
15 paragraph (1) or (2) by—

16 “(A) promulgating a rule;

17 “(B) entering into a testing consent agreement; or

18 “(C) issuing an order.

19 “(4) CONTENTS.—

20 “(A) IN GENERAL.—A rule, testing consent agreement, or order issued under this  
21 subsection shall include—

22 “(i) identification of the chemical substance or mixture for which testing is  
23 required;

24 “(ii) identification of the persons required to conduct the testing;

25 “(iii) test protocols and methodologies for the development of information for  
26 the chemical substance or mixture, including specific reference to any reliable  
27 nonanimal test procedures; and

28 “(iv) specification of the period within which individuals and entities required  
29 to conduct the testing shall submit to the Administrator the information developed  
30 in accordance with the procedures described in clause (iii).

31 “(B) CONSIDERATIONS.—In determining the procedures and period to be required  
32 under subparagraph (A), the Administrator shall take into consideration—

33 “(i) the relative costs of the various test protocols and methodologies that may  
34 be required; ~~and~~

35  
36 “(ii) the reasonably foreseeable availability of facilities and personnel required  
37 to perform the testing; **and**

1                   “(iii) the deadlines applicable to the Administrator under section 6(a).

2                   **“(5) CONSIDERATION OF FEDERAL AGENCY RECOMMENDATIONS.—The Administrator**  
3                   **shall consider the recommendations of other Federal agencies regarding the chemical**  
4                   **substances and mixtures to which the Administrator shall give priority consideration**  
5                   **under this section.—**

6  
7                   “(b) Statement of Need.—

8                   “(1) IN GENERAL.—In promulgating a rule, entering into a testing consent agreement, or  
9                   issuing an order for the development of additional information (including information on  
10                  exposure or exposure potential) pursuant to this section, the Administrator shall—

11                  “(A) identify the need intended to be met by the rule, agreement, or order;

12                  “(B) explain why information reasonably available to the Administrator at that time  
13                  is inadequate to meet that need, including a reference, as appropriate, to the  
14                  information identified in paragraph (2)(B); and

15                  “(C) explain the basis for any decision that requires the use of vertebrate animals.

16                  “(2) EXPLANATION IN CASE OF ORDER.—

17                  “(A) IN GENERAL.—If the Administrator issues an order under this section, the  
18                  Administrator shall issue a statement providing a justification for why issuance of an  
19                  order is warranted instead of promulgating a rule or entering into a testing consent  
20                  agreement.

21                  “(B) CONTENTS.—A statement described in subparagraph (A) shall contain a  
22                  description of—

23                          “(i) information that is readily accessible to the Administrator, including  
24                          information submitted under any other provision of law;

25                          “(ii) the extent to which the Administrator has obtained or attempted to obtain  
26                          the information through voluntary submissions; and

27                          “(iii) any information relied on in safety assessments for other chemical  
28                          substances relevant to the chemical substances that would be the subject of the  
29                          order.

30                  “(c) Reduction of Testing on Vertebrates.—

31                  “(1) IN GENERAL.—The Administrator shall minimize, to the extent practicable, the use of  
32                  vertebrate animals in testing of chemical substances or mixtures, by—

33                          ~~“(A) encouraging and facilitating—~~ **prior to making a request or adopting a**  
34                          **requirement for testing using vertebrate animals, taking into consideration, as**  
35                          **appropriate and to the extent practicable, reasonably available—**

36                          **“(i) toxicity information;**

37                          **“(ii) computational toxicology and bioinformatics;**

38                          **\*\* 1 “(iii) high-throughput screening methods and the prediction models of**

those methods; and

**\*\* 2** “(iv) scientifically reliable and relevant alternatives to tests on animals that would provide equivalent information;”

**“(B) encouraging and facilitating—**

“(i) the use of integrated and tiered testing and assessment strategies;

“(ii) the use of best available science in existence on the date on which the test is conducted;

“(iii) the use of test methods that eliminate or reduce the use of animals while providing information of high scientific quality;

“(iv) the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide reliable and useful information on other chemical substances in the category;

“(v) the formation of industry consortia to jointly conduct testing to avoid unnecessary duplication of tests; and

“(vi) the submission of information from—

“(I) animal-based studies; and

“(II) emerging methods and models; and

~~“(B)”~~**“(C)** funding research and validation studies to reduce, refine, and replace the use of animal tests in accordance with this subsection.

**“(2) IMPLEMENTATION OF ALTERNATIVE TESTING METHODS.—**To promote the development and timely incorporation of new testing methods that are not based on vertebrate animals, the Administrator shall—

“(A) not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, develop a strategic plan to promote the development and implementation of alternative test methods and testing strategies to generate information under this title that can reduce, refine, or replace the use of vertebrate animals, including toxicity pathway-based risk assessment, in vitro studies, systems biology, computational toxicology, bioinformatics, and high-throughput screening;

“(B) as practicable, ensure that the strategic plan developed under subparagraph (A) is reflected in the development of requirements for testing under this section;

“(C) identify in the strategic plan developed under subparagraph (A) particular alternative test methods or testing strategies that do not require new vertebrate animal testing and are scientifically reliable, relevant, and capable of providing information of equivalent scientific reliability and quality to that which would be obtained from vertebrate animal testing;

“(D) provide an opportunity for public notice and comment on the contents of the plan developed under subparagraph (A), including the criteria for considering scientific reliability, relevance, and equivalent information and the test methods and strategies

identified in subparagraph (C);

“(E) beginning on the date that is 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act and every 5 years thereafter, submit to Congress a report that describes the progress made in implementing this subsection and goals for future alternative test methods implementation;

“(F) fund and carry out research, development, performance assessment, and translational studies to accelerate the development of test methods and testing strategies that reduce, refine, or replace the use of vertebrate animals in any testing under this title; and

“(G) identify synergies with the related information requirements of other jurisdictions to minimize the potential for additional or duplicative testing.

“(3) CRITERIA FOR ADAPTING OR WAIVING ANIMAL TESTING REQUIREMENTS.—On request from a manufacturer or processor that is required to conduct testing of a chemical substance or mixture on vertebrate animals under this section, the Administrator may adapt or waive the requirement, if the Administrator determines that—

“(A) there is sufficient evidence from several independent sources of information to support a conclusion that a chemical substance or mixture has, or does not have, a particular property if the information from each individual source alone is insufficient to support the conclusion;

“(B) as a result of 1 or more physical or chemical properties of the chemical substance or mixture or other toxicokinetic considerations—

“(i) the substance cannot be absorbed; or

“(ii) testing for a specific endpoint is technically not practicable to conduct; or

“(C) a chemical substance or mixture cannot be tested in vertebrate animals at concentrations that do not result in significant pain or distress, because of physical or chemical properties of the chemical substance or mixture, such as a potential to cause severe corrosion or severe irritation to the tissues of the animal.

“(4) VOLUNTARY TESTING.—

“(A) IN GENERAL.—Any person developing information for submission under this title on a voluntary basis and not pursuant to any request or requirement by the Administrator shall first attempt to develop the information by means of an alternative or nonanimal test method or testing strategy that the Administrator has determined under paragraph (2)(C) to be scientifically reliable, relevant, and capable of providing equivalent information, before conducting new animal testing.

“(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph—

“(i) requires the Administrator to review the basis on which the person is conducting testing described in subparagraph (A);

“(ii) prohibits the use of other test methods or testing strategies by any person for purposes other than developing information for submission under this title on a voluntary basis; or

“(iii) prohibits the use of other test methods or testing strategies by any person, subsequent to the attempt to develop information using the test methods and testing strategies identified by the Administrator under paragraph (2)(C).

“(d) Testing Requirements.—

“(1) IN GENERAL.—The Administrator may require the development of information by—

“(A) manufacturers and processors of the chemical substance or mixture; and

“(B) ~~subject to paragraph (3)~~, persons that begin to manufacture or process the chemical substance or ~~mixture~~ **mixture**—

~~“(i) after the effective date of the rule, testing consent agreement, or order; but~~

~~“(ii) before the period ending on the later of—~~

~~“(I) 5 years after the date referred to in clause (i); or~~

~~\* 3 “(II) the last day of the period that begins on the date referred to in clause (i) and that is equal to the period that the Administrator determines was necessary to develop the information.~~

“(2) DESIGNATION.—The Administrator may permit 2 or more persons identified in subparagraph (A) or (B) of paragraph (1) to designate 1 of the persons or a qualified third party—

“(A) to develop the information; and

“(B) to submit the information on behalf of the persons making the designation.

“(3) EXEMPTIONS.—

“(A) IN GENERAL.—A person otherwise subject to a rule, testing consent agreement, or order under this section may submit to the Administrator an application for an exemption on the basis that ~~the information submission of information by the applicant on the chemical substance or mixture would be duplicative of—~~

“(i) **information on the chemical substance or mixture that—**

**“(I) has been submitted to the Administrator pursuant to a rule, consent agreement, or order under this section; or**

**“(II) is being developed by a person designated under paragraph (2);**  
    **or**

“(ii) **information on an equivalent chemical substance or mixture that—**

**“(I) has been submitted to the Administrator pursuant to a rule, consent agreement, or order under this section; or**

**“(II) is being developed by a person designated under paragraph (2).**

“(B) FAIR AND EQUITABLE REIMBURSEMENT TO DESIGNEE.—

“(i) IN GENERAL.—If the Administrator accepts an application submitted under subparagraph (A), **before the end of the reimbursement period described in**

1 **clause (iii)**, the Administrator shall direct the applicant to provide to the person  
2 designated under paragraph (2) fair and equitable reimbursement, as agreed to  
3 between the applicant and the designee.

4 “(ii) **ARBITRATION.**—If the applicant and a person designated under paragraph  
5 (2) cannot reach agreement on the amount of fair and equitable reimbursement,  
6 the amount shall be determined by arbitration.

7 “(iii) **REIMBURSEMENT PERIOD.**—**For the purposes of this subparagraph,**  
8 **the reimbursement period for any information for a chemical substance or**  
9 **mixture is a period—**

10 “(I) **beginning on the date the information is submitted in accordance**  
11 **with a rule, testing consent agreement, or order under this section; and**

12 “(II) **ending on the later of—**

13 “(aa) **5 years after the date referred to in subclause (I); or**

14 **\*\* 3 “(H)“(bb) the last day of the period that begins on the date**  
15 **referred to in clause (i) subclause (I) and that is equal to the period that**  
16 **the Administrator determines was necessary to develop the information.**

17 “(C) **TERMINATION.**—If, after granting an exemption under this paragraph, the  
18 Administrator determines that no person designated under paragraph (2) has complied  
19 with the rule, testing consent agreement, or order, the Administrator shall—

20 “(i) by order, terminate the exemption; and

21 “(ii) notify in writing each person that received an exemption of the  
22 requirements with respect to which the exemption was granted.

23 “(4) **TIERED TESTING.**—

24 “(A) **IN GENERAL.**—Except as provided in subparagraph (D), the Administrator shall  
25 employ a tiered screening and testing process, under which the results of  
26 screening-level tests or assessments of available information inform the decision as to  
27 whether 1 or more additional tests are necessary.

28 “(B) **SCREENING-LEVEL TESTS.**—

29 “(i) **IN GENERAL.**—The screening-level tests required for a chemical substance  
30 or mixture may include tests for hazard (which may include in silico, in vitro, and  
31 in vivo tests), environmental and biological fate and transport, and measurements  
32 or modeling of exposure or exposure potential, as appropriate.

33 “(ii) **USE.**—Screening-level tests shall be used—

34 “(I) to screen chemical substances or mixtures for potential adverse  
35 effects; and

36 “(II) to inform a decision of the Administrator regarding whether more  
37 complex or targeted additional testing is necessary.

38 “(C) **ADDITIONAL TESTING.**—If the Administrator determines under subparagraph  
39 (B) that additional testing is necessary to provide more definitive information for

safety assessments or safety determinations, the Administrator may require more advanced tests for potential health or environmental effects or exposure potential.

“(D) ADVANCED TESTING WITHOUT SCREENING.—The Administrator may require more advanced testing without conducting screening-level testing when other information available to the Administrator justifies the advanced testing, pursuant to guidance developed by the Administrator under this section.

“(e) Transparency.—Subject to section 14, the Administrator shall make available to the public all testing consent agreements and orders and all information submitted under this section.”.

(b) Conforming Amendment.—Section 104(i)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(i)(5)(A)) is amended in the third sentence by striking “section 4(e)” and inserting “section 4(f)”. **inserting “(as in effect on the day before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act)” after “Toxic Substances Control Act”.**

## SEC. 6. PRIORITIZATION SCREENING.

The Toxic Substances Control Act is amended by inserting after section 4 (15 U.S.C. 2603) the following:

### “SEC. 4A. PRIORITIZATION SCREENING.

“(a) Prioritization Screening Process and List of Substances.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall establish, by rule, a risk-based screening process and explicit criteria for identifying existing chemical substances that are—

“(A) a high priority for a safety assessment and safety determination under section 6 (referred to in this Act as ‘high-priority substances’); and

“(B) a low priority for a safety assessment and safety determination (referred to in this Act as ‘low-priority substances’).

“(2) INITIAL LIST AND SUBSEQUENT LISTS OF HIGH- AND LOW-PRIORITY SUBSTANCES.—

“(A) IN GENERAL.—Before the date of promulgation of the rule under paragraph (1) and not later than 180 days after the date of enactment of this section, the **Administrator shall Administrator—**

~~“(i) shall take into consideration and publish an initial list of high-priority substances and low-priority substances; and~~

~~“(ii) pursuant to section 6(b), may initiate or continue safety assessments and safety determinations for those high-priority substances.~~

“(B) REQUIREMENTS.—

“(i) IN GENERAL.—The initial list of chemical substances shall contain at least 10 high-priority substances, at least 5 of which are drawn from the list of chemical substances identified by the Administrator in the October 2014 TSCA Work Plan and subsequent updates, and at least 10 low-priority substances.

“(ii) SUBSEQUENTLY IDENTIFIED SUBSTANCES.—Insofar as possible, at least 50 percent of all substances subsequently identified by the Administrator as high-priority substances shall be drawn from the list of chemical substances identified by the Administrator in the October 2014 TSCA Work Plan and subsequent updates, until all Work Plan chemicals have been designated under this subsection.

“(iii) ~~PERSISTENCE AND BIOACCUMULATION.~~—~~IN PREFERENCES.~~—

“(I) **IN GENERAL.**—In developing the initial list and in identifying additional high-priority substances, the Administrator shall give preference to to—

“(aa) chemical substances ~~scored as high for that~~, **with respect to persistence and bioaccumulation, score high for 1 and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012; and**

“(bb) chemical substances listed in the October 2014 TSCA Work Plan and subsequent updates **that are known human carcinogens and have high acute and chronic toxicity.**

“(II) **METALS AND METAL COMPOUNDS.**—**In prioritizing and assessing metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment of the Office of the Science Advisor, Risk Assessment Forum, and dated March 2007 (or a successor document), and may use other applicable information consistent with the best available science.**

“(C) **ADDITIONAL CHEMICAL REVIEWS.**—The Administrator shall, as soon as practicable and not later than—

“(i) 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 20 high-priority substances have undergone or are undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 20 low-priority substances have been designated; and

“(ii) 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 25 high-priority substances have undergone or are undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 25 low-priority substances have been designated.

“(3) **IMPLEMENTATION.**—

“(A) **CONSIDERATION OF ACTIVE AND INACTIVE SUBSTANCES.**—

“(i) **ACTIVE SUBSTANCES.**—~~In carrying out~~ **implementing the prioritization screening process established under** paragraph (1), the Administrator shall take

1 into consideration active substances, as determined under section 8, which may  
2 include chemical substances on the interim list of active substances established  
3 under that section.

4 “(ii) INACTIVE SUBSTANCES.—In ~~carrying out~~ **implementing the prioritization**  
5 **screening process established under** paragraph (1), the Administrator may take  
6 into consideration inactive substances, as determined under section 8, that the  
7 Administrator determines—

8 “(I)(aa) have not been subject to a regulatory or other enforceable action  
9 by the Administrator to ban or phase out the substances; and

10 “(bb) have the potential for high hazard and widespread exposure; or

11 “(II)(aa) have been subject to a regulatory or other enforceable action by  
12 the Administrator to ban or phase out the substances; and

13 “(bb) with respect to which there exists the potential for residual high  
14 hazards or widespread exposures not otherwise addressed by the regulatory  
15 or other action.

16 “(iii) REPOPULATION.—

17 “(I) IN GENERAL.—On the completion of a safety determination under  
18 section 6 for a chemical substance, the Administrator shall remove the  
19 chemical substance from the list of high-priority substances established  
20 under this subsection.

21 “(II) ADDITIONS.—The Administrator shall add at least 1 chemical  
22 substance to the list of high-priority substances for each chemical substance  
23 removed from the list of high-priority substances established under this  
24 subsection, until a safety assessment and safety determination is completed  
25 for all **chemical substances not designated as high-priority.** ~~high-priority~~  
26 ~~substances.~~

27 ~~“(III) Low-priority substances.—If a low-priority substance is~~  
28 ~~subsequently designated as a high-priority substance, the Administrator shall~~  
29 ~~remove that substance from the list of low-priority substances.~~

30 “(B) TIMELY COMPLETION OF PRIORITIZATION SCREENING PROCESS.—

31 “(i) IN GENERAL.—The Administrator shall—

32 “(I) except as provided under paragraph (2), not later than 180 days after  
33 the effective date of the final rule under paragraph (1), begin the  
34 prioritization screening process; and

35 “(II) make every effort to complete the designation of all active substances  
36 as high-priority substances or low-priority substances in a timely manner.

37 “(ii) DECISIONS ON SUBSTANCES SUBJECT TO TESTING FOR PRIORITIZATION  
38 PURPOSES.—Not later than 90 days after the date of receipt of information  
39 regarding a chemical substance complying with a rule, testing consent agreement,  
40 or order issued under section 4(a)(2), the Administrator shall designate the

chemical substance as a high-priority substance or low-priority substance.

“(iii) CONSIDERATION.—

“(I) IN GENERAL.—The Administrator shall screen substances and designate high-priority substances ~~taking into consideration~~ **consistent with** the ability of the Administrator to schedule and complete safety assessments and safety determinations under section 6 in a ~~timely manner~~. **accordance with the deadlines under subsection (a) of that section.**

“(II) ANNUAL GOAL.—The Administrator shall publish an annual goal for the number of chemical substances to be subject to the prioritization screening process.

“(C) SCREENING OF CATEGORIES OF SUBSTANCES.—The Administrator may screen categories of chemical substances to ensure an efficient prioritization screening process to allow for timely and adequate designations of high-priority substances and low-priority substances and safety assessments and safety determinations for high-priority substances.

“(D) PUBLICATION OF LIST OF CHEMICAL SUBSTANCES.—The Administrator shall keep current and publish a list of chemical substances ~~that~~ **that includes and identifies substances—**

~~“(i)“(i) that are being considered in the prioritization screening process and the status of the chemical substances in the prioritization process, including those chemical substances;~~

**“(ii) for which prioritization decisions have been deferred; and postponed pursuant to subsection (b)(5), including the basis for the postponement; and**

~~“(i)“(iii) that are designated as high-priority substances or low-priority substances, including the bases for such designations.~~

“(4) CRITERIA.—The criteria described in paragraph (1) shall account for—

“(A) the recommendation of the Governor of a State or a State agency with responsibility for protecting health or the environment from chemical substances appropriate for prioritization screening;

“(B) the hazard and exposure potential of the chemical substance (or category of substances), including persistence, bioaccumulation, and specific scientific classifications and designations by authoritative governmental entities;

“(C) the conditions of use or significant changes in the conditions of use of the chemical substance;

“(D) evidence and indicators of exposure potential to humans or the environment from the chemical substance, including potentially exposed or susceptible populations **and storage near significant sources of drinking water;**

“(E) the volume of a chemical substance manufactured or processed;

“(F) whether the volume of a chemical substance as reported ~~under~~ **pursuant to a** rule promulgated pursuant to section 8(a) has significantly increased or decreased

1 ~~during the period beginning on the date of a previous report or the date on which a~~  
2 ~~notice has been submitted under section 5(b) for that chemical substance;~~

3 “(G) the availability of information regarding potential hazards and exposures  
4 required for conducting a safety assessment or safety determination, with limited  
5 availability of relevant information to be a sufficient basis for designating a chemical  
6 substance as a high-priority substance, subject to the condition that limited availability  
7 shall not require designation as a high-priority substance; and

8 “(H) the extent of Federal or State regulation of the chemical substance or the extent  
9 of the impact of State regulation of the chemical substance on the United States, with  
10 existing Federal or State regulation of any uses evaluated in the prioritization screening  
11 process as a factor in designating a chemical substance to be a high-priority or a  
12 low-priority substance.

13 “(b) Prioritization Screening Process and Decisions.—

14 “(1) ~~IN GENERAL.—THE GENERAL.~~ **In implementing the** prioritization screening  
15 process developed under subsection (a) ~~shall include a requirement that~~, the Administrator  
16 shall—

17 “(A) identify the chemical substances being considered for prioritization;

18 “(B) request interested persons to supply information regarding the chemical  
19 substances being considered;

20 “(C) apply the criteria identified in subsection (a)(4); and

21 “(D) subject to paragraph (5) and using the information available to the  
22 Administrator at the time of the decision, identify a chemical substance as a  
23 high-priority substance or a low-priority substance.

24 “(2) ~~INTEGRATION OF~~ **REASONABLY AVAILABLE** INFORMATION.—The prioritization  
25 screening decision regarding a chemical substance shall ~~integrate~~ **consider** any hazard and  
26 exposure information relating to the chemical substance that is **reasonably** available to the  
27 Administrator.

28 “(3) IDENTIFICATION OF HIGH-PRIORITY SUBSTANCES.—The Administrator—

29 “(A) shall identify as a high-priority substance a chemical substance that, relative to  
30 other active chemical substances, the Administrator determines has the potential for  
31 significant hazard and significant exposure;

32 “(B) may identify as a high-priority substance a chemical substance that, relative to  
33 other active chemical substances, the Administrator determines has the potential for  
34 significant hazard or significant exposure; and

35 “(C) may identify as a high-priority substance an inactive substance, as determined  
36 under subsection (a)(3)(A)(ii) and section 8(b), that the Administrator determines  
37 warrants a safety assessment and safety determination under section 6.

38 “(4) IDENTIFICATION OF LOW-PRIORITY SUBSTANCES.—The Administrator shall identify as  
39 a low-priority substance a chemical substance that the Administrator concludes has  
40 information sufficient to establish that the chemical substance is likely to meet the safety

1 standard.

2 “(5) ~~DEFERRING~~ **POSTPONING** A DECISION.—If the Administrator determines that  
3 additional information is ~~required~~ **needed** to establish the priority of a chemical substance  
4 under this section, the Administrator may ~~defer the~~ **postpone a** prioritization screening  
5 decision for a reasonable period—

6 “(A) to allow for the submission of additional information by an interested person  
7 and for the Administrator to evaluate the additional information; or

8 “(B) to require the development of information pursuant to a rule, testing consent  
9 agreement, or order issued under section 4(a)(2).

10 “(6) DEADLINES FOR SUBMISSION OF INFORMATION.—If the Administrator requests the  
11 development or submission of information under this section, the Administrator shall  
12 establish a deadline for submission of the information.

13 “(7) NOTICE AND COMMENT.—The Administrator shall—

14 “(A) publish, including in the Federal Register, the proposed decisions made under  
15 paragraphs (3), (4), and (5) and the basis for the decisions;

16 and“(B) **identify the information and analysis on which the decisions are based;**  
17 **and**

18 “~~(B)~~“(C) provide 90 days for public comment.

19 “(8) REVISIONS OF PRIOR DESIGNATIONS.—

20 “(A) IN GENERAL.—At any time, ~~and at the discretion of the Administrator,~~ the  
21 Administrator may revise the designation of a chemical substance as a high-priority  
22 substance or a low-priority substance based on information available to the  
23 Administrator after the date of the determination under paragraph (3) or (4).

24 “(B) LIMITED AVAILABILITY.—If limited availability of relevant information was a  
25 basis in the designation of a chemical substance as a high-priority substance, the  
26 Administrator shall reevaluate the prioritization screening of the chemical substance on  
27 receiving the relevant information.

28 “(9) OTHER INFORMATION RELEVANT TO PRIORITIZATION.—

29 “(A) IN GENERAL.—If, after the date of enactment of the Frank R. Lautenberg  
30 Chemical Safety for the 21st Century Act, a State proposes an administrative action or  
31 enacts a statute or takes an administrative action to prohibit or otherwise restrict the  
32 manufacturing, processing, distribution in commerce, or use of a chemical substance  
33 that the Administrator has not designated as a high-priority substance, the Governor or  
34 State agency with responsibility for implementing the statute or administrative action  
35 shall notify the Administrator.

36 “(B) REQUESTS FOR INFORMATION.—Following receipt of a notification provided  
37 under subparagraph (A), the Administrator may request any available information from  
38 the Governor or the State agency with respect to—

39 “(i) scientific evidence related to the hazards, exposures and risks of the  
40 chemical substance under the conditions of use which the statute or administrative

action is intended to address;

“(ii) any State or local conditions which warranted the statute or administrative action;

“(iii) the statutory or administrative authority on which the action is based; and

“(iv) any other available information relevant to the prohibition or other restriction, including information on any alternatives considered and their hazards, exposures, and risks.

“(C) **PRIORITIZATION SCREENING.**—The Administrator shall conduct a prioritization screening under this subsection for all substances that—

“(i) are the subject of notifications received under subparagraph (A); and

“(ii) the Administrator determines—

“(I) are likely to have significant health or environmental impacts;

“(II) are likely to have significant impact on interstate commerce; or

“(III) have been subject to a prohibition or other restriction under a statute or administrative action in 2 or more States.

“(D) **POST-PRIORITIZATION NOTICE.**—If, after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a State proposes or takes an administrative action or enacts a statute to prohibit or otherwise restrict the manufacturing, processing, distribution in commerce, or use of a high-priority substance, after the date on which the deadline established pursuant to subsection (a) of section 6 for completion of the safety determination under that subsection expires but before the date on which the Administrator publishes the safety determination under that subsection, the Governor or State agency with responsibility for implementing the statute or administrative action shall—

“(i) notify the Administrator; and

“(ii) provide the scientific and legal basis for the action.

“(E) **AVAILABILITY TO PUBLIC.**—Subject to section 14 and any applicable State law regarding the protection of confidential information provided to the State or to the Administrator, the Administrator shall make information received from a Governor or State agency under subparagraph (A) publicly available.

~~“(E)“(F)~~ **EFFECT OF PARAGRAPH.**—Nothing in this paragraph shall preempt a State statute or administrative action, require approval of a State statute or administrative action, or apply section 15 to a State.

“(10) **REVIEW.**—Not less frequently than once every 5 years after the date on which the process under this subsection is established, the Administrator shall—

“(A) review the process on the basis of experience and taking into consideration resources available to efficiently and effectively screen and prioritize chemical substances; and

“(B) if necessary, modify the prioritization screening process.

1 “(11) EFFECT.—Subject to section 18, a designation by the Administrator under this  
2 section with respect to a chemical substance shall not affect—

3 “(A) the manufacture, processing, distribution in commerce, use, or disposal of the  
4 chemical substance; or

5 “(B) the regulation of those activities.

6 “(c) Additional Priorities for Safety Assessments and Determinations.—

7 “(1) REQUIREMENTS.—

8 “(A) IN GENERAL.—The ~~prioritization screening process developed rule~~  
9 **promulgated** under subsection (a) shall—

10 “(i) include a process by which a manufacturer or processor of an active  
11 chemical substance that has not been designated a high-priority substance or is not  
12 in the process of a prioritization screening by the Administrator, may request that  
13 the Administrator designate the substance as an additional priority for a safety  
14 assessment and safety determination, subject to the payment of fees pursuant to  
15 section ~~26(b)(3)(E)~~ **26(b)(3)(D)**;

16 “(ii) specify the information to be provided in such requests; and

17 “(iii) specify the criteria **(which may include criteria identified in subsection**  
18 **(a)(4)) that** the Administrator shall use to determine whether or not to grant such  
19 a request, which shall include whether the substance is subject to restrictions  
20 imposed by statutes enacted or administrative actions taken by 1 or more States  
21 on the manufacture, processing, distribution in commerce, or use of the substance.

22 “(B) PREFERENCE.—Subject to paragraph (2), in deciding whether to grant requests  
23 under this subsection the Administrator shall give a preference to requests concerning  
24 substances for which the Administrator determines that restrictions imposed by 1 or  
25 more States have the potential to have a significant impact on interstate commerce or  
26 health or the environment.

27 “(C) EXCEPTIONS.—Chemical substances for which requests have been granted  
28 under this subsection shall not be subject to subsection (a)(3)(A)(iii) or section 18(b).

29 “(2) LIMITATIONS.—In considering whether to grant a request submitted under paragraph  
30 (1), the Administrator shall ensure that—

31 “(A) ~~if a sufficient number of additional priority requests meet the requirements of~~  
32 ~~paragraph (1), the number of substances designated to undergo safety assessments~~  
33 ~~and safety determinations under the process and criteria pursuant to paragraph~~  
34 **(1) is** not less than 25 percent, or more than 30 percent, of the cumulative number of  
35 substances designated to undergo safety assessments and safety determinations under  
36 subsections (a)(2) and (b)(3) ~~are substances designated under the process and criteria~~  
37 ~~pursuant to paragraph (1);~~ **(except that if less than 25 percent are received by the**  
38 **Administrator, the Administrator shall grant each request that meets the**  
39 **requirements of paragraph (1));**

40 “(B) the resources allocated to conducting safety assessments and safety  
41 determinations for additional priorities designated under this subsection are

proportionate to the number of such substances relative to the total number of substances **currently** designated to undergo safety assessments and safety determinations under this section; and

“(C) the number of additional priority requests stipulated under subparagraph (A) is in addition to the total number of high-priority substances identified under subsections (a)(2) and (b)(3).

“(3) ADDITIONAL REVIEW OF WORK PLAN CHEMICALS FOR SAFETY ASSESSMENT AND SAFETY DETERMINATION.—In the case of a request under paragraph (1) with respect to a chemical substance identified by the Administrator in the October 2014 **TSCA** Work Plan—

“(A) the 30-percent cap specified in paragraph (2)(A) shall not apply and the addition of Work Plan chemicals shall be at the discretion of the Administrator; and

“(B) notwithstanding paragraph (1)(C), requests for additional Work Plan chemicals under this subsection shall be considered high-priority chemicals subject to section 18(b) but not subsection (a)(3)(A)(iii).

“(4) REQUIREMENTS.—

“(A) IN GENERAL.—The public shall be provided notice and an opportunity to comment on requests submitted under this subsection.

“(B) DECISION BY ADMINISTRATOR.—Not later than 180 days after the date on which the Administrator receives a request under this subsection, the Administrator shall decide whether or not to grant the request.

“(C) ASSESSMENT AND DETERMINATION.—If the Administrator grants a request under this subsection, the safety assessment and safety determination—

“(i) shall be conducted in accordance with the deadlines and other requirements of sections 3A(i) and 6; and

“(ii) shall not be expedited or otherwise subject to special treatment relative to high-priority substances designated pursuant to subsection (b)(3) that are undergoing safety assessments and safety determinations.”.

## SEC. 7. NEW CHEMICALS AND SIGNIFICANT NEW USES.

Section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) is amended—

(1) by striking the section designation and heading and inserting the following:

## “SEC. 5. NEW CHEMICALS AND SIGNIFICANT NEW USES.”;

(2) by striking subsection (b);

(3) by redesignating subsection (a) as subsection (b);

(4) by redesignating subsection (i) as subsection (a) and moving the subsection so as to

appear at the beginning of the section;

(5) in subsection (b) (as so redesignated)—

(A) in the subsection heading, by striking “In General” and inserting “Notices”;

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “subsection (h)” and inserting “paragraph (3) and subsection (h)”;

(ii) in the matter following subparagraph (B)—

(I) by striking “subsection (d)” and inserting “subsection (c)”;

(II) by striking “and such person complies with any applicable requirement of subsection (b)”;

(C) by adding at the end the following:

“(3) ARTICLE CONSIDERATION.—The Administrator may require the notification **under this section** for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(B) if the Administrator makes an affirmative finding in a rule under paragraph (2) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule warrants notification.”;

(6) by redesignating subsections (c) and (d) as subsections (d) and (c), respectively, and moving subsection (c) (as so redesigned) so as appear after subsection (b) (as redesignated by paragraph (3));

(7) in subsection (c) (as so redesignated)—

(A) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—The notice required by subsection (b) shall include, with respect to a chemical substance—

“(A) the information required by sections 720.45 and 720.50 of title 40, Code of Federal Regulations (or successor regulations); and

“(B) **all known or reasonably ascertainable** information regarding conditions of use and reasonably anticipated exposures.”;

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A)—

(I) by striking “subsection (a)” and inserting “subsection (b)”;

(II) by striking “or of data under subsection (b)”;

(ii) in subparagraph (A), by adding “and” after the semicolon at the end;

(iii) in subparagraph (B), by striking “; and” and inserting a period; and

(iv) by striking subparagraph (C); and

(C) in paragraph (3), by striking “subsection (a) and for which the notification

period prescribed by subsection (a), (b), or (c)” and inserting “subsection (b) and for which the notification period prescribed by subsection (b) or (d)”;

(8) by striking subsection (d) (as redesignated by paragraph (6)) and inserting the following:

“(d) Review of Notice.—

“(1) INITIAL REVIEW.—

“(A) IN GENERAL.—Subject to subparagraph (B), not later than 90 days after the date of receipt of a notice submitted under subsection (b), the Administrator shall—

“(i) conduct an initial review of the notice;

“(ii) as needed, develop a profile of the relevant chemical substance and the potential for exposure to humans and the environment; and

“(iii) make ~~any necessary~~ a determination under paragraph (3).

“(B) EXTENSION.—Except as provided in paragraph (5), the Administrator may extend the period described in subparagraph (A) for good cause for 1 or more periods, the total of which shall be not more than 90 days.

“(2) INFORMATION SOURCES.—In evaluating a notice under paragraph (1), the Administrator shall take into consideration—

“(A) any relevant information identified in subsection (c)(1); and

“(B) any other relevant additional information available to the Administrator.

“(3) DETERMINATIONS.—Before the end of the applicable period for review under paragraph (1), based on the information described in paragraph (2), and subject to section 18(g), the Administrator shall determine that—

“(A) the relevant chemical substance or significant new use is not likely to meet the safety standard, in which case the Administrator shall take appropriate action under paragraph (4);

“(B) the relevant chemical substance or significant new use is likely to meet the safety standard, in which case the Administrator shall allow the review period to expire without additional restrictions; or

“(C) additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraphs (4) and (5).

“(4) RESTRICTIONS.—

“(A) DETERMINATION BY ADMINISTRATOR.—

“(i) IN GENERAL.—If the Administrator makes a determination under subparagraph (A) or (C) of paragraph (3) with respect to a notice submitted under subsection (b)—

“(I) the Administrator, before the end of the applicable period for review under paragraph (1) and by consent agreement or order, as appropriate, shall

1 prohibit or otherwise restrict the manufacture, processing, use, distribution in  
2 commerce, or disposal (as applicable) of the chemical substance, or of the  
3 chemical substance for a significant new use, without compliance with the  
4 restrictions specified in the consent agreement or order that the  
5 Administrator determines are sufficient to ensure that the chemical substance  
6 or significant new use is likely to meet the safety standard; and

7 “(II) no person may commence manufacture of the chemical substance, or  
8 manufacture or processing of the chemical substance for a significant new  
9 use, except in compliance with the restrictions specified in the consent  
10 agreement or order.

11 “(ii) **LIKELY TO MEET STANDARD.**—If the Administrator makes a determination  
12 under subparagraph (B) of paragraph (3) with respect to a chemical substance or  
13 significant new use for which a notice was submitted under subsection (b), at the  
14 end of the applicable period for review under paragraph (1), the submitter of the  
15 notice may commence manufacture for commercial purposes of the chemical  
16 substance or manufacture or processing of the chemical substance for a significant  
17 new use.

18 “(B) **REQUIREMENTS.**—Not later than 90 days after issuing a consent agreement or  
19 order under subparagraph (A), the Administrator shall—

20 “(i) ~~take into consideration~~ **consider** whether to promulgate a rule pursuant to  
21 subsection (b)(2) that identifies as a significant new use any manufacturing,  
22 processing, use, distribution in commerce, or disposal of the chemical substance,  
23 ~~or of the chemical substance for a new use, that is not in compliance with that~~  
24 **does not conform to** the restrictions imposed by the consent agreement or order;  
25 and

26 “(ii)(I) initiate a rulemaking described in clause (i); or

27 “(II) publish a statement describing the reasons of the Administrator for not  
28 initiating a rulemaking.

29 “(C) **INCLUSIONS.**—A prohibition or other restriction under subparagraph (A) may  
30 include, as appropriate—

31 “(i) subject to section 18(g), a requirement that a chemical substance shall be  
32 marked with, or accompanied by, clear and adequate minimum warnings and  
33 instructions with respect to use, distribution in commerce, or disposal, or any  
34 combination of those activities, with the form and content of the minimum  
35 warnings and instructions to be prescribed by the Administrator

36 “(ii) a requirement that manufacturers or processors of the chemical substance  
37 shall—

38 “(I) make and retain records of the processes used to manufacture or  
39 process, as applicable, the chemical substance; or

40 “(II) monitor or conduct such additional tests as are reasonably necessary  
41 to address potential risks from the manufacture, processing, distribution in  
42 commerce, use, or disposal, as applicable, of the chemical substance, subject

to section 4;

“(iii) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce—

“(I) in general; or

“(II) for a particular use;

“(iv) a prohibition or other restriction of—

“(I) the manufacture, processing, or distribution in commerce of the chemical substance for a significant new use;

“(II) any method of commercial use of the chemical substance; or

“(III) any method of disposal of the chemical substance; or

“(v) a prohibition or other restriction on the manufacture, processing, or distribution in commerce of the chemical substance—

“(I) in general; or

“(II) for a particular use.

“(D) PERSISTENT AND BIOACCUMULATIVE SUBSTANCES.—For a chemical substance the Administrator determines ~~ranks high for~~, **with respect to persistence and bioaccumulation, scores high for 1 and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012**, the Administrator shall, in selecting among prohibitions and other restrictions that the Administrator determines are sufficient to ensure that the chemical substance is likely to meet the safety standard, reduce potential exposure to the substance to the maximum extent practicable.

“(E) WORKPLACE EXPOSURES.—~~THE EXPOSURES.~~ **To the extent practicable, the** Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health prior to adopting any prohibition or other restriction under this subsection to address workplace exposures.

“(F) DEFINITION OF REQUIREMENT.—For purposes of this Act, the term ‘requirement’ as used in this section does not displace common law.

“(5) ADDITIONAL INFORMATION.—If the Administrator determines under paragraph (3)(C) that additional information is necessary to conduct a review under this subsection, the Administrator—

“(A) shall provide an opportunity for the submitter of the notice to submit the additional information;

“(B) may, by agreement with the submitter, extend the review period for a reasonable time to allow the development and submission of the additional information;

“(C) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information; and

“(D) on receipt of information the Administrator finds supports the determination

1 under paragraph (3), shall promptly make the determination.”;

2 (9) by striking subsections (e) through (g) and inserting the following:

3 “(e) Notice of Commencement.—

4 “(1) IN GENERAL.—Not later than 30 days after the date on which a manufacturer that has

5 submitted a notice under subsection (b) commences nonexempt commercial manufacture of

6 a chemical substance, the manufacturer shall submit to the Administrator a notice of

7 commencement that identifies—

8 “(A) the name of the manufacturer; and

9 “(B) the initial date of nonexempt commercial manufacture.

10 “(2) WITHDRAWAL.—A manufacturer or processor that has submitted a notice under

11 subsection (b), but that has not commenced nonexempt commercial manufacture or

12 processing of the chemical substance, may withdraw the notice.

13 “(f) Further Evaluation.—The Administrator may review a chemical substance under section

14 4A at any time after the Administrator receives—

15 “(1) a notice of commencement for a chemical substance under subsection (e); or

16 “(2) new information regarding the chemical substance.

17 “(g) Transparency.—Subject to section 14, the Administrator shall make available to the

18 public—

19 “(1) all notices, determinations, consent agreements, rules, and orders ~~of submitted~~

20 **under this section or made by the Administrator under this section;** and

21 “(2) all information submitted or issued under this section.”; and

22 (10) in subsection (h)—

23 (A) in paragraph (1)—

24 (i) in the matter preceding subparagraph (A), by striking “(a) or”; and

25 (ii) in subparagraph (A), by inserting “, without taking into account cost or

26 other nonrisk factors” after “the environment”;

27 (B) by striking paragraph (2);

28 (C) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5),

29 respectively;

30 (D) in paragraph (2) (as so redesignated), in the matter preceding subparagraph (A),

31 by striking “subsections (a) and (b)” and inserting “subsection (b)”;

32 (E) in paragraph (3) (as so redesignated)—

33 (i) in the first sentence, by striking “will not present an unreasonable risk of

34 injury to health or the environment” and inserting “will meet the safety standard”;

35 and

36 (ii) by striking the second sentence;

(F) in paragraph (4) (as so redesignated), by striking “subsections (a) and (b)” and inserting “subsection (b)”; and

(G) in paragraph (5) (as so redesignated), in the first sentence, by striking “paragraph (1) or (5)” and inserting “paragraph (1) or (4)”.

## SEC. 8. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.

Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended—

(1) by striking the section designation and heading and inserting the following:

### “SEC. 6. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.”;

(2) by redesignating subsections (e) and (f) as subsections ~~(g)~~**(h)** and ~~(h)~~**(i)**, respectively;

(3) by striking subsections (a) through (d) and inserting the following:

“(a) In General.—The Administrator—

“(1) shall conduct a safety assessment and make a safety determination of each high-priority substance in accordance with subsections (b) and (c);

“(2) shall, as soon as practicable and not later than 6 months after the date on which a chemical substance is designated as a high-priority substance, define and publish the scope of the safety assessment and safety determination to be conducted pursuant to this section, including the hazards, exposures, conditions of use, and potentially exposed or susceptible populations that the Administrator expects to consider;

“(3) as appropriate based on the results of a safety determination, shall establish restrictions pursuant to subsection (d);

“(4) shall complete **and publish** a safety assessment and safety determination not later than 3 years after the date on which a chemical substance is designated as a high-priority substance;

“(5) shall promulgate a **any necessary** final rule pursuant to subsection (d) by not later than 2 years after the date on which the safety determination is completed; ~~and~~

“(6) may extend any deadline under paragraph (4) ~~or (5) for a reasonable period of time after an adequate public justification for not more than 1 year, if information relating to the high-priority substance, required to be developed in a rule, order, or consent agreement under section 4—~~

“(A) has not yet been submitted to the Administrator; or

“(B) was submitted to the Administrator—

“(i) within the time specified in the rule, order, or consent agreement pursuant to section 4(a)(4)(A)(iv); and

“(ii) on or after the date that is 120 days before the expiration of the deadline described in paragraph (4); and

1       “(7) may extend the deadline under paragraph (5) for not more than 2 years, subject  
2       to the condition that the aggregate length of all extensions of deadlines under this  
3       subsection, ~~plus any deferral under subsection (c)(2)~~, does not exceed 2 years.

4       “(b) Prior Actions and Notice of Existing Information.—

5               “(1) PRIOR-INITIATED ASSESSMENTS.—

6                   “(A) IN GENERAL.—Nothing in this Act prevents the Administrator from initiating a  
7                   safety assessment or safety determination regarding a chemical substance, or from  
8                   continuing or completing such a safety assessment or safety determination ~~that was~~  
9                   ~~initiated before the date of enactment of the Frank R. Lautenberg Chemical Safety for~~  
10                  ~~the 21st Century Act~~, prior to the effective date of the policies and, procedures, **and**  
11                  **guidance** required to be established by the Administrator under section 3A or 4A.

12                  “(B) INTEGRATION OF PRIOR POLICIES AND PROCEDURES.—As policies and  
13                  procedures under section 3A and 4A are established, to the maximum extent  
14                  practicable, the Administrator shall integrate the policies and procedures into ongoing  
15                  safety assessments and safety determinations.

16               “(2) ACTIONS COMPLETED PRIOR TO COMPLETION OF POLICIES AND  
17       PROCEDURES.—Nothing in this Act requires the Administrator to revise or withdraw a  
18       completed safety assessment, safety determination, or rule solely because the action was  
19       completed prior to the completion of a policy or procedure established under section 3A or  
20       4A, and the validity of a completed assessment, determination, or rule shall not be  
21       determined based on the content of such a policy or procedure.

22               “(3) NOTICE OF EXISTING INFORMATION.—

23                   “(A) IN GENERAL.—The Administrator shall, where such information is available,  
24                   take notice of existing information regarding hazard and exposure published by other  
25                   Federal agencies and the National Academies and incorporate the information in safety  
26                   assessments and safety determinations with the objective of increasing the efficiency  
27                   of the safety assessments and safety determinations.

28                   “(B) INCLUSION OF INFORMATION.—Existing information described in subparagraph  
29                   (A) should be included to the extent practicable and where the Administrator  
30                   determines the information is relevant and scientifically reliable.

31       “(c) Safety Determinations.—

32               “(1) IN GENERAL.—Based on a review of the information available to the Administrator,  
33       including draft safety assessments submitted by interested persons **pursuant to section**  
34       **3A(h)(2)(D)**, and subject to section 18(g), the Administrator shall ~~determine that—~~  
35       **determine—**

36                   ~~“(A) “(A) by order, that~~ the relevant chemical substance meets the safety standard;

37                   “(B) **that** the relevant chemical substance does not meet the safety standard, in  
38                   which case the Administrator shall, by rule under subsection (d)—

39                   “(i) impose restrictions necessary to ensure that the chemical substance meets  
40                   the safety standard under the conditions of use; or

“(ii) if the safety standard cannot be met with the application of **other** restrictions **under subsection (d)(3)**, ban or phase out the chemical substance, as appropriate; or

“(C) **that** additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraph (2).

“(2) ADDITIONAL INFORMATION.—If the Administrator determines that additional information is necessary to make a safety assessment or safety determination for a high-priority substance, the Administrator—

“(A) shall provide an opportunity for interested persons to submit the additional information;

“(B) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information;

“(C) may defer, for a reasonable period consistent with the deadlines described in subsection (a), a safety assessment and safety determination until after receipt of the information; and

“(D) consistent with the deadlines described in subsection (a), on receipt of information the Administrator finds supports the safety assessment and safety determination, shall make a determination under paragraph (1).

“(3) ESTABLISHMENT OF DEADLINE.—In requesting the development or submission of information under this section, the Administrator shall establish a deadline for the submission of the information.

“(d) Rule.—

“(1) IMPLEMENTATION.—If the Administrator makes a determination under subsection (c)(1)(B) with respect to a chemical substance, the Administrator shall promulgate a rule establishing restrictions necessary to ensure that the chemical substance meets the safety standard.

“(2) SCOPE.—

“(A) IN GENERAL.—The rule promulgated pursuant to this subsection—

“(i) may apply to mixtures containing the chemical substance, as appropriate;

“(ii) shall include dates by which compliance is mandatory, which—

“(I) shall be as soon as practicable, **but not later than 4 years after the date of promulgation of the rule, except in the case of a use exempted under paragraph (5)**;

“(II) in the case of a ban or phase-out of the chemical substance, shall implement the ban or phase-out in as short a period as practicable; ~~and~~

“(III) as determined by the Administrator, may vary for different affected persons; and

1                   **“(IV) following a determination by the Administrator that compliance**  
2                   **is technologically or economically infeasible within the timeframe**  
3                   **specified in subclause (I), shall provide up to an additional 18 months**  
4                   **for compliance to be mandatory;**

5                   “(iii) shall exempt replacement parts that are manufactured prior to the  
6                   effective date of the rule for articles that are first manufactured prior to the  
7                   effective date of the rule unless the Administrator finds the replacement parts  
8                   contribute significantly to the identified risk; ~~and~~

9  
10                   “(iv) shall, in selecting among prohibitions and other restrictions, apply such  
11                   prohibitions or other restrictions to articles containing the chemical substance  
12                   only to the extent necessary to address the identified risks in order to determine  
13                   that the chemical substance meets the safety standard; **and**

14                   **“(v) shall, when the Administrator determines that the chemical substance**  
15                   **does not meet the safety standard for a potentially exposed or susceptible**  
16                   **population, apply prohibitions or other restrictions necessary to ensure that**  
17                   **the substance meets the safety standard for that population.-**

18  
19                   “(B) PERSISTENT AND BIOACCUMULATIVE SUBSTANCES.—For a chemical substance  
20                   the Administrator determines ~~ranks high for~~, **with respect to** persistence and  
21                   bioaccumulation, **scores high for 1 and either high or moderate for the other,**  
22                   **pursuant to the TSCA Work Plan Chemicals Methods Document published by**  
23                   **the Administrator in February 2012,** the Administrator shall, in selecting among  
24                   prohibitions and other restrictions that the Administrator determines are sufficient to  
25                   ensure that the chemical substance meets the safety standard, reduce exposure to the  
26                   substance to the maximum extent practicable.

27                   “(C) WORKPLACE EXPOSURES.—The Administrator shall consult with the Assistant  
28                   Secretary of Labor for Occupational Safety and Health before adopting any prohibition  
29                   or other restriction under this subsection to address workplace exposures.

30                   “(D) DEFINITION OF REQUIREMENT.—For the purposes of this Act, the term  
31                   ‘requirement’ as used in this section does not displace common law.

32                   **“(3) RESTRICTIONS.—A RESTRICTIONS.—Subject to section 18, a restriction under**  
33                   **paragraph (1) may include, as appropriate—**

34                   ~~“(A) subject to section 18,~~ a requirement that a chemical substance shall be marked  
35                   with, or accompanied by, clear and adequate minimum warnings and instructions with  
36                   respect to use, distribution in commerce, or disposal, or any combination of those  
37                   activities, with the form and content of the minimum warnings and instructions to be  
38                   prescribed by the Administrator;

39                   “(B) a requirement that manufacturers or processors of the chemical substance  
40                   shall—

41                   “(i) make and retain records of the processes used to manufacture or process

the chemical substance;

“(ii) describe and apply the relevant quality control procedures followed in the manufacturing or processing of the substance; or

“(iii) monitor or conduct tests that are reasonably necessary to ensure compliance with the requirements of any rule under this subsection;

“(C) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce;

“(D) a requirement to ban or phase out, or ~~any other rule regarding,~~ **otherwise restrict** the manufacture, processing, or distribution in commerce of the chemical substance for—

“(i) a particular use;

“(ii) a particular use at a concentration in excess of a level specified by the Administrator; or

“(iii) all uses;

“(E) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce for—

“(i) a particular use; or

“(ii) a particular use at a concentration in excess of a level specified by the Administrator;

“(F) a requirement to ban, phase out, or otherwise restrict any method of commercial use of the chemical substance;

“(G) a requirement to ban, phase out, or otherwise restrict any method of disposal of the chemical substance or any article containing the chemical substance; and

“(H) a requirement directing manufacturers or processors of the chemical substance to give notice of the Administrator’s determination under subsection (c)(1)(B) to distributors in commerce of the chemical substance and, to the extent reasonably ascertainable, to other persons in the chain of commerce in possession of the chemical substance.

“(4) ANALYSIS FOR RULEMAKING.—

“(A) CONSIDERATIONS.—In deciding which restrictions to impose under paragraph (3) as part of developing a rule under paragraph (1), the Administrator shall take into consideration, to the extent practicable based on reasonably available information, the quantifiable and nonquantifiable costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

“(B) ALTERNATIVES.—As part of the analysis, the Administrator shall review any 1 or more technically and economically feasible alternatives to the chemical substance that the Administrator determines are relevant to the rulemaking.

“(C) PUBLIC AVAILABILITY.—In proposing a rule under paragraph (1), the

1 Administrator shall make publicly available any analysis conducted under this  
2 paragraph.

3 “(D) STATEMENT REQUIRED.—In making final a rule under paragraph (1), the  
4 Administrator shall include a statement describing how the analysis considered under  
5 subparagraph (A) was taken into account.

6 “(5) EXEMPTIONS.—

7 “(A) IN GENERAL.—The Administrator may ~~exempt 1 or more uses of a chemical~~  
8 ~~substance from any restriction in, as part of~~ a rule promulgated under paragraph (1) **or**  
9 **in a separate rule, exempt 1 or more uses of a chemical substance from any**  
10 **restriction in a rule promulgated under paragraph (1)** if the Administrator  
11 determines that—

12 “(i) the ~~rule~~ **restriction** cannot be complied with, without—

13 “(I) harming national security;

14 “(II) causing significant disruption in the national economy due to the lack  
15 of availability of a chemical substance; or

16 “(III) interfering with a critical or essential use for which no technically  
17 and economically feasible safer alternative is available, taking into  
18 consideration hazard and exposure; or

19 “(ii) the use of the chemical substance, as compared to reasonably available  
20 alternatives, provides a substantial benefit to health, the environment, or public  
21 safety.

22 “(B) EXEMPTION ANALYSIS.—In proposing a rule under ~~paragraph (1) that includes~~  
23 ~~an exemption under~~ this paragraph, the Administrator shall make publicly available  
24 any analysis conducted under this paragraph to assess the need for the exemption.

25 “(C) STATEMENT REQUIRED.—In making final a rule under ~~paragraph (1) that~~  
26 ~~includes an exemption under~~ this paragraph, the Administrator shall include a  
27 statement describing how the analysis considered under subparagraph (B) was taken  
28 into account.

29 “(D) ANALYSIS IN CASE OF BAN OR PHASE-OUT.—In determining whether an  
30 exemption should be granted under this paragraph for a chemical substance for which a  
31 ban or phase-out is **included in a proposed or final rule under paragraph (1)**, the  
32 Administrator shall take into consideration, to the extent practicable based on  
33 reasonably available information, the quantifiable and nonquantifiable costs and  
34 benefits of the 1 or more ~~technically and economically feasible~~ alternatives to the  
35 chemical substance **the Administrator determines to be technically and**  
36 **economically feasible and** most likely to be used in place of the chemical substance  
37 under the conditions of use ~~if the rule is promulgated~~.

38 “(E) CONDITIONS.—As part of a rule promulgated under ~~this paragraph(1)~~, the  
39 Administrator shall include conditions ~~in any exemption established under this~~  
40 ~~paragraph~~, including reasonable recordkeeping, monitoring, and reporting  
41 requirements, to the extent that the Administrator determines the conditions are

necessary to protect health and the environment while achieving the purposes of the exemption.

“(F) DURATION.—

“(i) IN GENERAL.—The Administrator shall establish, as part of a rule under ~~paragraph (1) that contains an exemption under~~ this paragraph, a time limit on any exemption for a time to be determined by the Administrator as reasonable on a case-by-case basis.

“(ii) AUTHORITY OF ADMINISTRATOR.—The Administrator, by rule, may extend, modify, or eliminate ~~the an~~ exemption if the Administrator determines, on the basis of reasonably available information and after adequate public justification, the exemption warrants extension or is no longer necessary.

“(iii) CONSIDERATIONS.—

“(I) IN GENERAL.—Subject to subclause (II), the Administrator shall issue exemptions and establish time periods by considering factors determined by the Administrator to be relevant to the goals of fostering innovation and the development of alternatives that meet the safety standard.

“(II) LIMITATION.—Any renewal of an exemption in the case of a rule **under paragraph (1)** requiring the ban or phase-out of a chemical substance shall not exceed 5 years.

“(e) Immediate Effect.—The Administrator may declare a proposed rule under subsection (d)(1) to be effective on publication of the rule in the Federal Register and until the effective date of final action taken respecting the rule, if—

“(1) the Administrator determines that—

“(A) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to the proposed rule or any combination of those activities is likely to result in a risk of serious or widespread injury to health or the environment before the effective date; and

“(B) making the proposed rule so effective is necessary to protect the public interest; and

“(2) in the case of a proposed rule to prohibit the manufacture, processing, or distribution in commerce of a chemical substance or mixture because of the risk determined under paragraph (1)(A), a court has granted relief in an action under section 7 with respect to that risk associated with the chemical substance or mixture.

“(f) Final Agency Action.—Under this section and subject to section 18—

“(1) a safety determination, and the associated safety assessment, for a chemical substance that the Administrator determines under subsection (c) meets the safety standard, shall be considered to be a final agency action, effective beginning on the date of issuance of the final safety determination; and

“(2) a final rule promulgated under subsection (d)(1), and the associated safety assessment and safety determination that a chemical substance does not meet the safety

standard, shall be considered to be a final agency action, effective beginning on the date of promulgation of the final rule.”; and rule.

~~(4) in subsection (g)~~“(g) Extension of Deadlines for Certain Chemical Substances.—The Administrator may not extend any deadline under subsection (a) for a chemical substance designated as a high priority that is listed in the 2014 update of the TSCA Work Plan without adequate public justification that demonstrates, following a review of the information reasonably available to the Administrator, that the Administrator cannot adequately complete a safety assessment and safety determination, or a final rule pursuant to subsection (d), without additional information regarding the chemical substance.”; and

(4) in subsection (h) (as redesignated by paragraph (2))—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

## SEC. 9. IMMINENT HAZARDS.

Section 7 of the Toxic Substances Control Act (15 U.S.C. 2606) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) Civil Actions.—

“(1) IN GENERAL.—The Administrator may commence a civil action in an appropriate United States district court for—

“(A) seizure of an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture;

“(B) relief (as authorized by subsection (b)) against any person that manufactures, processes, distributes in commerce, uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture; or

“(C) both seizure described in subparagraph (A) and relief described in subparagraph (B).

“(2) RULE, ORDER, OR OTHER PROCEEDING.—A civil action may be commenced under this paragraph, notwithstanding—

“(A) the existence of a decision, rule, consent agreement, or order by the Administrator under section 4, 4A, 5, or 6 or title IV or VI; or

“(B) the pendency of any administrative or judicial proceeding under any provision of this Act.”;

(2) in subsection (b)(1), by striking “unreasonable”;

(3) in subsection (d), by striking “section 6(a)” and inserting “section 6(d)”;

(4) in subsection (f), in the first sentence, by striking “and unreasonable”.

## SEC. 10. INFORMATION COLLECTION AND REPORTING.

Section 8 of the Toxic Substances Control Act (15 U.S.C. 2607) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(3)—

(i) in subparagraph (A)(ii)(I)—

(i)(I) by striking “5(b)(4)” and inserting “5”;

(ii)(II) by inserting “section 4 or” after “in effect under”; and

(iii)(III) by striking “5(e),” and inserting “5(d)(4);”; and

(ii) by adding at the end the following:

“(C) Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and not less frequently than once every 10 years thereafter, the Administrator, after consultation with the Administrator of the Small Business Administration, shall—

“(i) review the adequacy of the standards prescribed according to subparagraph (B);

“(ii) after providing public notice and an opportunity for comment, make a determination as to whether revision of the standards is warranted; and

“(iii) revise the standards if the Administrator so determines.”; and

(B) by adding at the end the following:

“(4) RULES.—

“(A) DEADLINE.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall promulgate rules requiring the maintenance of records and the reporting of **additional** information known or reasonably ascertainable by the person making the report, including rules **requiring applicable to** processors to report information, so that the Administrator has the information necessary to carry out sections 4 and 6 **this title**.

“(ii) MODIFICATION OF PRIOR RULES.—In carrying out this subparagraph, the Administrator may modify, as appropriate, rules promulgated before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

“(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A)—

“(i) may impose different reporting and recordkeeping requirements on manufacturers and processors; and

“(ii) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

“(C) ADMINISTRATION.—In implementing the reporting and recordkeeping requirements under this paragraph, the Administrator shall take measures—

“(i) to limit the potential for duplication in reporting requirements;

“(ii) to minimize the impact of the rules on small manufacturers and processors;  
and

“(iii) to apply any reporting obligations to those persons likely to have  
information relevant to the effective implementation of this **title**.”; ~~title.~~

~~“(5) Guidance.—The Administrator shall develop guidance relating to the  
information required to be reported under the rules promulgated under this  
subsection.”;~~

(2) in subsection (b), by adding at the end the following:

“(3) NOMENCLATURE.—

“(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

“(i) maintain the use of Class 2 nomenclature in use on the date of enactment of  
the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

“(ii) maintain the use of the Soap and Detergent Association Nomenclature  
System, published in March 1978 by the Administrator in section 1 of addendum  
III of the document entitled ‘Candidate List of Chemical Substances’, and further  
described in the appendix A of volume I of the 1985 edition of the Toxic  
Substances Control Act Substances Inventory (EPA Document No.  
EPA-560/7-85-002a); and

“(iii) treat all components of categories that are considered to be statutory  
mixtures under this Act as being included on the list published under paragraph  
(1) under the Chemical Abstracts Service numbers for the respective categories,  
including, without limitation—

“(I) cement, Portland, chemicals, CAS No. 65997-15-1;

“(II) cement, alumina, chemicals, CAS No. 65997-16-2;

“(III) glass, oxide, chemicals, CAS No. 65997-17-3;

“(IV) frits, chemicals, CAS No. 65997-18-4;

“(V) steel manufacture, chemicals, CAS No. 65997-19-5; and

“(VI) ceramic materials and wares, chemicals, CAS No. 66402-68-4.

“(B) MULTIPLE NOMENCLATURE CONVENTIONS.—

“(i) IN GENERAL.—If an existing guidance allows for multiple nomenclature  
conventions, the Administrator shall—

“(I) maintain the nomenclature conventions for substances; and

“(II) develop new guidance that—

“(aa) establishes equivalency between the nomenclature conventions  
for chemical substances on the list published under paragraph (1); and

“(bb) permits persons to rely on the new guidance for purposes of  
determining whether a chemical substance is on the list published under  
paragraph (1).

1           “(ii) MULTIPLE CAS NUMBERS.—For any chemical substance appearing multiple  
2           times on the list under different Chemical Abstracts Service numbers, the  
3           Administrator shall develop guidance recognizing the multiple listings as a single  
4           chemical substance.

5           “(4) CHEMICAL SUBSTANCES IN COMMERCE.—

6           “(A) RULES.—

7           “(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank  
8           R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator, by  
9           rule, shall require manufacturers and processors to notify the Administrator, by  
10          not later than 180 days after the date of promulgation of the rule, of each chemical  
11          substance on the list published under paragraph (1) that the manufacturer or  
12          processor, as applicable, has manufactured or processed for a nonexempt  
13          commercial purpose during the 10-year period ending on the day before the date  
14          of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century  
15          Act.

16          “(ii) ACTIVE SUBSTANCES.—The Administrator shall, ~~pursuant to paragraph~~  
17          ~~(5)(A)~~, designate chemical substances for which notices are received under clause  
18          (i) to be active substances on the list published under paragraph (1).

19          “(iii) INACTIVE SUBSTANCES.—**The Administrator shall designate chemical**  
20          **substances for which no notices are received under clause (i) to be inactive**  
21          **substances on the list published under paragraph (1).**

22          “(B) CONFIDENTIAL CHEMICAL SUBSTANCES.—~~THE RULE PROMULGATED BY THE~~  
23          ~~ADMINISTRATOR SUBSTANCES.—~~**In promulgating the rule established pursuant to**  
24          **subparagraph (A) shall require—, the Administrator shall—**

25          ~~“(i) the Administrator to—~~**“(i) maintain the list under paragraph (1), which shall**  
26          include a confidential portion and a nonconfidential portion consistent with this  
27          section and section 14;

28          “(ii) **require** a manufacturer or processor that is submitting a notice pursuant to  
29          subparagraph (A) for a chemical substance on the confidential portion of the list  
30          published under paragraph (1) to indicate in the notice whether the manufacturer  
31          or processor seeks to maintain any existing claim for protection against disclosure  
32          of the specific identity of the substance as confidential pursuant to section 14; and

33          “(iii) **require** the substantiation of those claims pursuant to section 14 and in  
34          accordance with the review plan described in subparagraph (C).

35          “(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator  
36          compiles the initial list of active substances pursuant to subparagraph (A), the  
37          Administrator shall promulgate a rule that establishes a plan to review all claims to  
38          protect the specific identities of chemical substances on the confidential portion of the  
39          list published under paragraph (1) that are ~~notified~~ **asserted** pursuant to subparagraph  
40          (A) ~~or identified as active substances under subsection (f)(1).~~ **(B).**

41          “(D) REQUIREMENTS OF REVIEW PLAN.—~~THE PLAN.—~~**Under the review plan under**  
42          **subparagraph (C), the Administrator shall—**

“(i) require, at the time requested by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the date of the request by the Administrator;

“(ii) ~~require the Administrator,~~ in accordance with section 14—

“(I) ~~to~~ review each substantiation—

“(aa) submitted pursuant to clause (i) to determine if the claim warrants protection from disclosure; and

“(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

“(II) approve, modify, or deny each claim; and

“(III) except as provided in this section and section 14, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

“(aa) the person notifies the Administrator that the person is withdrawing the ~~confidentiality~~ claim, in which case the Administrator shall promptly make the information available to the public; or

“(bb) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in section 14(g)(2); and

“(iii) encourage manufacturers or processors that have previously made claims to protect the specific identities of chemical substances identified as inactive pursuant to subsection (f)(2) to review and either withdraw or substantiate the claims.

“(E) TIMELINE FOR COMPLETION OF REVIEWS.—

“(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

“(ii) CONSIDERATIONS.—

“(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of ~~applicable~~ claims needing review and the available resources.

“(II) ANNUAL GOAL.—~~THE REVIEW GOAL AND RESULTS.—At the~~

**beginning of each year, the Administrator shall publish an annual goal for reviews and the number of reviews to be completed over the course of implementation of the plan: completed in the prior year.**

“(5) ACTIVE AND INACTIVE SUBSTANCES.—

“(A) IN GENERAL.—The Administrator shall maintain and keep current designations of active substances and inactive substances on the list published under paragraph (1).

~~“(B) UPDATE.—THE ADMINISTRATOR SHALL UPDATE THE LIST OF CHEMICAL SUBSTANCES DESIGNATED AS ACTIVE SUBSTANCES AS SOON AS PRACTICABLE AFTER THE DATE OF PUBLICATION OF THE MOST RECENT DATA REPORTED UNDER—~~

~~“(I) PART 711 OF TITLE 40, CODE OF FEDERAL REGULATIONS (OR SUCCESSOR REGULATIONS); AND~~

~~“(II) THE RULES PROMULGATED PURSUANT TO SUBSECTION (A)(4).~~

~~“(C) CHANGE TO ACTIVE STATUS.—~~

“(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

“(ii) CONFIDENTIAL CHEMICAL IDENTITY CLAIMS.—If a person submitting a notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific identity of the inactive substance as confidential, the person shall—

“(I) in the notice submitted under clause (i), assert the claim; and

“(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

“(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

“(I) designate the applicable chemical substance as an active substance;

“(II) pursuant to section 14, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific identity of the chemical substance and approve, modify, or deny the claim;

“(III) except as provided in this section and section 14, protect from disclosure the specific identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of ~~not less than~~ 10 years, unless, prior to the expiration of the period—

“(aa) the person notifies the Administrator that the person is withdrawing the confidentiality claim, in which case the Administrator shall promptly make the information available to the public; or

“(bb) the Administrator otherwise becomes aware that the need for

1 protection from disclosure can no longer be substantiated, in which case  
2 the Administrator shall take the actions described in section 14(g)(2);  
3 and

4 “(IV) pursuant to section 4A, review the priority of the chemical substance  
5 as the Administrator determines to be necessary.

6 ~~“(D)”~~“(C) CATEGORY STATUS.—The list of inactive substances shall not be  
7 considered to be a category for purposes of section 26(c).

8 “(6) INTERIM LIST OF ACTIVE SUBSTANCES.—Prior to the promulgation of the rule required  
9 under paragraph (4)(A), the Administrator shall designate the chemical substances reported  
10 under part 711 of title 40, Code of Federal Regulations (~~or successor regulations~~)(**as in**  
11 **effect on the date of enactment of the Frank R. Lautenberg Chemical Safety for the**  
12 **21st Century Act**), during the reporting period that most closely preceded the date of  
13 enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as the  
14 interim list of active substances for the purposes of section 4A.

15 “(7) PUBLIC PARTICIPATION.—~~SUBJECT INFORMATION.~~—**Subject** to this subsection, the  
16 Administrator shall make available to the public—

17 “(A) the specific identity of each chemical substance on the nonconfidential portion  
18 of the list published under paragraph (1) that the Administrator has designated as—

19 “(i) an active substance; or

20 “(ii) an inactive substance;

21 “(B) the accession number, generic name, and, if applicable, premanufacture notice  
22 case number for each chemical substance on the confidential portion of the list  
23 published under paragraph (1) for which a claim of confidentiality was received ~~and~~  
24 ~~approved by the Administrator pursuant to section 14;~~ and

25 “(C) subject to **subsections (f) and (g) of section 14(g)**, the specific identity of any  
26 active substance for which—

27 “(i) ~~no~~ **a claim of for** protection against disclosure of the specific identity of the  
28 active substance ~~pursuant to this subsection was received;~~ **chemical substance**  
29 **was not asserted, as required under this subsection or subsection (d) or (f) of**  
30 **section 14;**

31 “(ii) a claim for protection against disclosure of the specific identity of the  
32 active substance has been denied by the Administrator; or

33 “(iii) the time period for protection against disclosure of the specific identity of  
34 the active substance has expired.

35 “(8) LIMITATION.—No person may assert a new claim under this subsection for  
36 protection from disclosure of a specific identity of any active or inactive chemical substance  
37 for which a notice is received under paragraph (4)(A)(i) or (5)(C)(i) that is not on the  
38 confidential portion of the list published under paragraph (1).

39 “(9) CERTIFICATION.—Under the rules promulgated under this subsection, manufacturers  
40 and processors shall be required—

1 “(A) to certify that each ~~report~~ **notice or substantiation** the manufacturer or  
2 processor submits complies with the requirements of the rule, and that any  
3 confidentiality claims are true and correct; and

4 “(B) to retain a record supporting the certification for a period of 5 years beginning  
5 on the last day of the submission period.”;

6 (3) in subsection (e)—

7 (A) by striking “Any person” and inserting the following:

8 “(1) IN GENERAL.—Any person”; and

9 (B) by adding at the end the following:

10 “(2) ~~APPLICABILITY.—ANY~~ **ADDITIONAL INFORMATION.—Any** person may submit to the  
11 Administrator information reasonably supporting the conclusion that a chemical substance  
12 or mixture presents, will present, or does not present a substantial risk of injury to health  
13 and the environment.”; and

14 (4) in subsection (f), by striking “For purposes of this section, the” and inserting the  
15 following: “In this section:

16 “(1) ACTIVE SUBSTANCE.—The term ‘active substance’ means a chemical substance—

17 “(A) that has been manufactured or processed for a nonexempt commercial purpose  
18 at any point during the 10-year period ending on the date of enactment of the Frank R.  
19 Lautenberg Chemical Safety for the 21st Century Act;

20 “(B) that is added to the list published under subsection (b)(1) after that date of  
21 enactment; or

22 “(C) for which a notice is received under subsection (b)(5)(C).

23 “(2) INACTIVE SUBSTANCE.—The term ‘inactive substance’ means a chemical substance  
24 on the list published under subsection (b)(1) that does not meet any of the criteria described  
25 in paragraph (1).

26 “(3) MANUFACTURE; PROCESS.—The”.

## 27 SEC. 11. RELATIONSHIP TO OTHER FEDERAL LAWS.

28 Section 9 of the Toxic Substances Control Act (15 U.S.C. 2608) is amended—

29 (1) in subsection (a)—

30 (A) in paragraph (1), in the first sentence—

31 (i) by striking “presents or will present an unreasonable risk to health or the  
32 environment” and inserting “does not **or will not** meet the safety standard”; and

33 (ii) by striking “such risk” the first place it appears and inserting “the risk posed  
34 by the substance or mixture”;

35 (B) in paragraph (2), ~~(2)~~—

36 (i) in subparagraph (A), by inserting “within the time period specified by  
37 the Administrator in the report” after “issues an order”;

(ii) in subparagraph (B), by inserting “responds within the time period specified by the Administrator in the report and” before “initiates, within 90 days”; and

(iii) in the matter following subparagraph (B), by striking “section 6 or 7” and inserting “section 6(d) or section 7”;

and

~~(C)~~ in (C) by redesignating paragraph (3) as paragraph (6);

(D) in paragraph (6) (as so redesignated), by striking “section 6 or 7” and inserting “section 6(d) or 7”; and

(E) by inserting after paragraph (2) the following:

“(3) The Administrator shall take the actions described in paragraph (4) if the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which the report was made does not—

“(A) issue the order described in paragraph (2)(A) within the time period specified by the Administrator in the report; or

“(B)(i) respond under paragraph (1) within the time frame specified by the Administrator in the report; and

“(ii) initiate action within 90 days of publication in the Federal Register of the response described in clause (i).

“(4) If an agency to which a report under paragraph (1) does not take the actions described in subparagraphs (A) or (B) of paragraph (3), the Administrator shall—

“(A) if a safety assessment and safety determination for the substance under section 6 has not been completed, complete the safety assessment and safety determination;

“(B) if the Administrator has determined or determines that the chemical substance does not meet the safety standard, initiate action under section 6(d) with respect to the risk; or

“(C) take any action authorized or required under section 7, as appropriate.

“(5) This subsection shall not relieve the Administrator of any obligation to complete a safety assessment and safety determination or take any required action under section 6(d) or 7 to address risks from the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of those activities, that are not identified in a report issued by the Administrator under paragraph (1).”;

(2) in subsection (d), in the first sentence, by striking “Health, Education, and Welfare” and inserting “Health and Human Services”; and

(3) by adding at the end the following:

“(e) Exposure Information.—If the Administrator obtains information related to exposures or releases of a chemical substance that may be prevented or reduced under another Federal law,

including laws not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.”.

## SEC. 12. RESEARCH, DEVELOPMENT, COLLECTION, DISSEMINATION, AND UTILIZATION OF DATA.

Section 10 of the Toxic Substances Control Act (15 U.S.C. 2609) is amended by striking “Health, Education, and Welfare” each place it appears and inserting “Health and Human Services”.

## SEC. 13. EXPORTS.

Section 12 of the Toxic Substances Control Act (15 U.S.C. 2611) is amended—

(1) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) EXCEPTION.—Paragraph (1) shall not apply to—

“(A) any new chemical substance that the Administrator ~~determines~~— **determines is likely to present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors;**

~~“(A) under section 5 is not likely to meet the safety standard; or~~“(B) any chemical substance that the Administrator determines presents or will present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors; or

~~“(B) under section 6 does not meet the safety standard.~~“(C) any chemical substance that—

“(3) Waivers.—For“(i) the Administrator determines is likely to present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors; and

“(ii) is subject to restriction under section 5(d)(4).

“(3) WAIVERS FOR CERTAIN MIXTURES AND ARTICLES.—For a mixture or article containing a chemical substance described in paragraph (2), the Administrator may—

“(A) determine that paragraph (1) shall not apply to the mixture or article; or

“(B) establish a threshold concentration in a mixture or article at which paragraph (1) shall not apply.

“(4) TESTING.—The Administrator may require testing under section 4 of any chemical substance or mixture exempted from this Act under paragraph (1) for the purpose of determining whether the chemical substance or mixture meets the safety standard within the United States.”;

(2) by striking subsection (b) and inserting the following:

1 “(b) Notice.—

2 “(1) IN GENERAL.—A person shall notify the Administrator that the person is exporting or  
3 intends to export to a foreign country—

4 “(A) a chemical substance or a mixture containing a chemical substance that the  
5 Administrator has determined under section 5 is not likely to meet the safety standard  
6 and for which a prohibition or other restriction has been proposed or established under  
7 that section;

8 “(B) a chemical substance or a mixture containing a chemical substance that the  
9 Administrator has determined under section 6 does not meet the safety standard and for  
10 which a prohibition or other restriction has been proposed or established under that  
11 section;

12 “(C) a chemical substance for which the United States is obligated by treaty to  
13 provide export notification;

14 “(D) a chemical substance or mixture **containing a chemical substance** subject to a  
15 **proposed or promulgated** significant new use rule, or a prohibition or other  
16 restriction pursuant to a rule, order, or consent agreement in effect under this Act; ~~or~~

17 “(E) a chemical substance or mixture for which the submission of information is  
18 required under section 4; **or**

19 “**(F) a chemical substance or mixture for which an action is pending or for**  
20 **which relief has been granted under section 7.**—

21  
22 “(2) RULES.—

23 “(A) IN GENERAL.—The Administrator shall promulgate rules to carry out paragraph  
24 (1).

25 “(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A) shall—

26 “(i) include such exemptions as the Administrator determines to be appropriate,  
27 which may include exemptions identified under section 5(h); and

28 “(ii) indicate whether, or to what extent, the rules apply to articles containing a  
29 chemical substance or mixture described in paragraph (1).

30 “(3) NOTIFICATION.—The Administrator shall submit to the government of each country  
31 to which a chemical substance or mixture is exported—

32 “(A) for a chemical substance or mixture described in subparagraph (A), (B), ~~or~~ (D),  
33 **or (F)** of paragraph (1), a notice of the determination, rule, order, consent agreement,  
34 **action, relief, or requirement**; ~~or designation~~;

35 “(B) for a chemical substance described in paragraph (1)(C), a notice that satisfies  
36 the obligation of the United States under the applicable treaty; and

37 “(C) for a chemical substance or mixture described in paragraph (1)(E), a notice of  
38 availability of the information on the chemical substance or mixture submitted to the  
39 Administrator.”; and

(3) in subsection (c)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.

## SEC. 14. CONFIDENTIAL INFORMATION.

Section 14 of the Toxic Substances Control Act (15 U.S.C. 2613) is amended to read as follows:

### “SEC. 14. CONFIDENTIAL INFORMATION.

“(a) In General.—Except as otherwise provided in this section, the Administrator shall not disclose information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, under subsection (b)(4) of that section—

“(1) that is reported to, or otherwise obtained by, the Administrator under this Act; and

“(2) for which the requirements of subsection (d) are met.

“(b) Information Generally Protected From Disclosure.—The following information specific to, and submitted by, a manufacturer, processor, or distributor that meets the requirements of subsections (a) and (d) shall be presumed to be protected from disclosure, subject to the condition that nothing in this Act prohibits the disclosure of any such information, or information that is the subject of subsection (g)(3), through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law:

“(1) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

“(2) Marketing and sales information.

“(3) Information identifying a supplier or customer.

“(4) Details of the full composition of a mixture and the respective percentages of constituents.

“(5) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or product.

“(6) Specific production or import volumes of the manufacturer ~~and specific~~.

“(7) **Specific** aggregated volumes across manufacturers, if the Administrator determines that disclosure of the specific aggregated volumes would reveal confidential information.

~~“(7)“(8)~~ Except as otherwise provided in this section, the specific identity of a chemical substance prior to the date on which the chemical substance is first offered for commercial distribution, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify a specific chemical substance, ~~if if~~—

~~“(A) the specific identity was claimed as confidential information at the time it was submitted in a notice under section 5; and~~

~~“(B) the claim—~~

1       ~~“(i) is not subject to an exception under subsection (e); or~~

2       ~~“(ii) has not subsequently been withdrawn or found by the Administrator not to warrant~~  
3       ~~protection as confidential information under subsection (f)(2) or (g).~~

4       “(c) Information Not Protected From Disclosure.—Notwithstanding **Disclosure**.—

5       **“(1) IN GENERAL.—Notwithstanding** subsections (a) and (b), the following information  
6       shall not be protected from disclosure:

7       ~~“(1)“(A) INFORMATION FROM HEALTH AND SAFETY STUDIES.—~~

8       ~~“(A)“(i) IN GENERAL.—Subject to subparagraph (B), subsection (a) does not~~  
9       ~~prohibit the disclosure of—~~ **clause (ii)—**

10       ~~“(i)“(I) any health and safety study that is submitted under this Act with~~  
11       ~~respect to—~~

12       ~~“(I)“(aa) any chemical substance or mixture that, on the date on~~  
13       ~~which the study is to be disclosed, has been offered for commercial~~  
14       ~~distribution; or~~

15       ~~“(II)“(bb) any chemical substance or mixture for which—~~

16       ~~“(aa)“(AA) testing is required under section 4; or~~

17       ~~“(bb)“(BB) a notification is required under section 5; or~~

18       ~~“(ii)“(II) any information reported to, or otherwise obtained by, the~~  
19       ~~Administrator from a health and safety study relating to a chemical substance~~  
20       ~~or mixture described in subclause (I) or (II) of clause (i). item (aa) or (bb) of~~  
21       ~~subclause (I).~~

22       ~~“(B)“(ii) EFFECT OF PARAGRAPH.—NOTHING SUBPARAGRAPH.—Nothing in~~  
23       ~~this paragraph subparagraph authorizes the release of any information that~~  
24       ~~discloses—~~

25       ~~“(i)“(I) a process used in the manufacturing or processing of a chemical~~  
26       ~~substance or mixture; or~~

27       ~~“(ii)“(II) in the case of a mixture, the portion of the mixture comprised by~~  
28       ~~any chemical substance in the mixture.~~

29  
30       ~~\* 4 “(2) Certain requests.—If a request is made to the Administrator under section-~~  
31       ~~552(a) of title 5, United States Code, for information that is described in paragraph (1)-~~  
32       ~~that is not described in paragraph (1)(B), the Administrator may not deny the request-~~  
33       ~~on the basis of section 552(b)(4) of title 5, United States Code.~~

34       ~~“(3)“(B) OTHER INFORMATION NOT PROTECTED FROM DISCLOSURE.—THE~~  
35       ~~FOLLOWING INFORMATION IS NOT PROTECTED FROM DISCLOSURE UNDER THIS SECTION:~~  
36       ~~DISCLOSURE.—~~

37       ~~“(A)“(i) For information submitted after the date of enactment of the Frank R.~~  
38       ~~Lautenberg Chemical Safety for the 21st Century Act, the specific identity of a~~  
39       ~~chemical substance as of the date on which the chemical substance is first offered~~

for commercial distribution, if the person submitting the information does not meet the requirements of subsection (d).

~~“(B)”~~**“(ii)”** A safety assessment developed, or a safety determination made, under section 6.

~~“(C)”~~**“(iii)”** Any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges.

~~“(D)”~~**“(iv)”** A general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

~~“(4)”~~**“(2)”** MIXED CONFIDENTIAL AND NONCONFIDENTIAL INFORMATION. —Any information that is otherwise eligible for protection under this section and ~~contained in a submission of~~ **is submitted with** information described in this subsection shall be protected from disclosure, if the submitter complies with subsection (d), subject to the condition that information in the submission that is not eligible for protection against disclosure shall be disclosed.

~~“(5)”~~**“(3)”** BAN OR PHASE-OUT. —If the Administrator promulgates a rule pursuant to section 6(d) that establishes a ban or phase-out of the manufacture, processing, or distribution in commerce of a chemical substance, subject to paragraphs (2), (3), and (4) of subsection (g), any protection from disclosure provided under this section with respect to the specific identity of the chemical substance and other information relating to the chemical substance shall no longer apply.

**\*\* 4 “(2)”**~~“(4)”~~ CERTAIN REQUESTS. —If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information that is ~~described in paragraph (1) that is not described in paragraph (1)~~ **subject to disclosure under this subsection**, the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.

**“(d) Requirements for Confidentiality Claims. —**

**“(1) ASSERTION OF CLAIMS. —**

**“(A) IN GENERAL. —**A person seeking to protect any information submitted under this Act from disclosure (including information described in subsection (b)) shall assert to the Administrator a claim for protection concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this title.

**“(B) INCLUSION. —**An assertion of a claim under subparagraph (A) shall include a statement that the person has—

**“(i) taken reasonable measures to protect the confidentiality of the information;**

“(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

“(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

“(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

“(C) SPECIFIC CHEMICAL IDENTITY.—In the case of a claim under subparagraph (A) for protection against disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the chemical substance that the Administrator may disclose to the public, subject to the condition that the generic name shall—

“(i) ~~conform~~ **be consistent** with guidance ~~prescribed~~ **issued** by the Administrator under paragraph (3)(A); and

“(ii) describe the chemical structure of the substance as specifically as practicable while protecting those features of the chemical structure—

“(I) that are considered to be confidential; and

“(II) the disclosure of which would be likely to **cause substantial harm to** the competitive position of the person.

“(D) PUBLIC INFORMATION.—No person may assert a claim under this section for protection from disclosure of information that is already publicly available.

“(2) ADDITIONAL REQUIREMENTS FOR CONFIDENTIALITY CLAIMS.—Except for information described in ~~paragraphs (1) through (7)~~ of subsection (b), a person asserting a claim to protect information from disclosure under this Act shall substantiate the claim, in accordance with the rules promulgated and **consistent with the** guidance issued by the Administrator.

“(3) GUIDANCE.—The Administrator shall develop guidance regarding—

“(A) the determination of structurally descriptive generic names, in the case of claims for the protection against disclosure of specific chemical identity; and

“(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (e).

“(4) CERTIFICATION.—An authorized official of a person described in paragraph (1)(A) shall certify that the ~~information that has been submitted is~~ **statement required to assert a claim submitted pursuant to paragraph (1)(B) and any information required to substantiate a claim submitted pursuant to paragraph (2) are** true and correct.

“(e) Exceptions to Protection From Disclosure.—Information described in subsection (a)—

“(1) shall be disclosed if the information is to be disclosed to an officer or employee of the United States in connection with the official duties of the officer or employee—

“(A) under any law for the protection of health or the environment; or

“(B) for a specific law enforcement purpose;

1 “(2) shall be disclosed if the information is to be disclosed to a contractor of the United  
2 States and employees of that contractor—

3 “(A) if, in the opinion of the Administrator, the disclosure is necessary for the  
4 satisfactory performance by the contractor of a contract with the United States for the  
5 performance of work in connection with this Act; and

6 “(B) subject to such conditions as the Administrator may specify;

7 “(3) shall be disclosed if the Administrator determines that disclosure is necessary to  
8 protect health or the environment;

9 “(4) shall be disclosed if the information is to be disclosed to a State or political  
10 subdivision of a State, on written request, for the purpose of development, administration,  
11 or enforcement of a law, ~~if if—~~

12 “(A) 1 or more applicable agreements with the Administrator that ~~conform~~ **are consistent**  
13 with the guidance issued under subsection (d)(3)(B) ensure that the recipient will take  
14 appropriate measures, and has adequate authority, to maintain the confidentiality of the  
15 information in accordance with procedures comparable to the procedures used by the  
16 Administrator to safeguard the information; and

17 “(B) ~~the Administrator notifies the person that submitted the information that the~~  
18 ~~information has been disclosed to the State or political subdivision of a State;~~

19 “(5) shall be disclosed if a health or environmental professional employed by a Federal or  
20 State agency or a treating physician or nurse in a nonemergency situation provides a written  
21 statement of need and agrees to sign a written confidentiality agreement with the  
22 Administrator, subject to the conditions that—

23 “(A) the statement of need and confidentiality agreement ~~shall conform~~ **are**  
24 **consistent** with the guidance issued under subsection (d)(3)(B);

25 “(B) the written statement of need shall be a statement that the person has a  
26 reasonable basis to suspect that—

27 “(i) the information is necessary for, or will assist in—

28 “(I) the diagnosis or treatment of 1 or more individuals; or

29 “(II) responding to an environmental release or exposure; and

30 “(ii) 1 or more individuals being diagnosed or treated have been exposed to the  
31 chemical substance concerned, or an environmental release or exposure has  
32 occurred; and

33 “(C) the confidentiality agreement shall provide that the person will not use the  
34 information for any purpose other than the health or environmental needs asserted in  
35 the statement of need, except as otherwise may be authorized by the terms of the  
36 agreement or by the person submitting the information to the Administrator, except  
37 that nothing in this Act prohibits the disclosure of any such information through  
38 discovery, subpoena, other court order, or any other judicial process otherwise allowed  
39 under applicable Federal or State law;

40 “(6) shall be disclosed if in the event of an emergency, a treating physician, nurse, agent

1 of a poison control center, public health or environmental official of a State or political  
2 subdivision of a State, or first responder (including any individual duly authorized by a  
3 Federal agency, State, or political subdivision of a State who is trained in urgent medical  
4 care or other emergency procedures, including a police officer, firefighter, or emergency  
5 medical technician) requests the information, subject to the conditions that—

6 “(A) the treating physician, nurse, agent, public health or environmental official of a  
7 State or a political subdivision of a State, or first responder shall have a reasonable  
8 basis to suspect that—

9 “(i) a medical or public health or environmental emergency exists;

10 “(ii) the information is necessary for, or will assist in, emergency or first-aid  
11 diagnosis or treatment; or

12 “(iii) 1 or more individuals being diagnosed or treated have likely been exposed  
13 to the chemical substance concerned, or a serious environmental release of or  
14 exposure to the chemical substance concerned has occurred;

15 “(B) if requested by the person submitting the information to the Administrator, the  
16 treating physician, nurse, agent, public health or environmental official of a State or a  
17 political subdivision of a State, or first responder shall, as described in paragraph (5)—

18 “(i) provide a written statement of need; and

19 “(ii) agree to sign a confidentiality agreement; and

20 “(C) the written confidentiality agreement or statement of need shall be submitted as  
21 soon as practicable, but not necessarily before the information is disclosed;

22 “(7) may be disclosed if the Administrator determines that disclosure is relevant in a  
23 proceeding under this Act, subject to the condition that the disclosure shall be made in such  
24 a manner as to preserve confidentiality to the maximum extent practicable without  
25 impairing the proceeding;

26 “(8) shall be disclosed if the information is to be disclosed, on written request of any duly  
27 authorized congressional committee, to that committee; or

28 “(9) shall be disclosed if the information is required to be disclosed or otherwise made  
29 public under any other provision of Federal law.

30 “(f) Duration of Protection From Disclosure.—

31 “(1) IN GENERAL.—

32 “(A) ~~INFORMATION PROTECTED NOT SUBJECT TO TIME LIMIT FOR PROTECTION~~  
33 ~~FROM DISCLOSURE.—Subject to paragraph (2), the Administrator shall protect from~~  
34 ~~disclosure information described in subsection (b) that meets the requirements of~~  
35 ~~subsection (d) for a period of 10 years, unless, prior to the expiration of the period—~~  
36 **subsections (a) and (d), unless—**

37 ~~“(i) an affected person—~~ **“(i) the person that asserted the claim** notifies the  
38 Administrator that the person is withdrawing the ~~confidentiality~~ claim, in which  
39 case the Administrator shall promptly make the information available to the  
40 public; or

1           “(ii) the Administrator otherwise becomes aware that the ~~need for protection~~  
2           ~~from disclosure can no longer be substantiated~~ **information does not qualify or**  
3           **no longer qualifies for protection against disclosure under subsection (a),** in  
4           which case the Administrator shall take ~~the any~~ actions described in **required**  
5           **under** subsection (g)(2).

6           “(B) INFORMATION SUBJECT TO TIME LIMIT FOR PROTECTION FROM  
7           DISCLOSURE.—**Subject to paragraph (2), the Administrator shall protect from**  
8           **disclosure information, other than information described in subsection (b), that**  
9           **meets the requirements of subsections (a) and (d) for a period of 10 years, unless,**  
10          **prior to the expiration of the period—**

11          “(i) the person that asserted the claim notifies the Administrator that the  
12          person is withdrawing the claim, in which case the Administrator shall  
13          promptly make the information available to the public; or

14          “(ii) the Administrator otherwise becomes aware that the information does  
15          not qualify or no longer qualifies for protection against disclosure under  
16          subsection (a), in which case the Administrator shall take any actions  
17          required under subsection (g)(2).

18          “(C) EXTENSIONS.—

19          “(i) IN GENERAL.—Not later than the date that is 60 days before the expiration  
20          of the period described in subparagraph ~~(A)~~(B), the Administrator shall provide to  
21          the person that asserted the claim a notice of the impending expiration of the  
22          period.

23          “(ii) STATEMENT.—

24                  “(I) IN GENERAL.—Not later than the date that is 30 days before the  
25                  expiration of the period described in subparagraph ~~(A)~~(B), a person  
26                  reasserting the relevant claim shall submit to the Administrator a ~~statement~~  
27                  **request for extension** substantiating, in accordance with subsection (d)(2),  
28                  the need to extend the period.

29                  “(II) ACTION BY ADMINISTRATOR.—Not later than the date ~~that is 30 days~~  
30                  ~~after the date of receipt of a statement under subclause (I), the Administrator~~  
31                  ~~shall—~~ **of expiration of the period described in subparagraph (B), the**  
32                  **Administrator shall, in accordance with subsection (g)(1)(C)—**

33                          “(aa) review the request **submitted under subclause (I);**

34                          “(bb) make a determination regarding whether the ~~information claim~~  
35                          for which the request is ~~made~~ **was submitted** continues to meet the  
36                          relevant criteria established under this section; and

37                          “(cc)(AA) grant an extension of ~~not more than~~ 10 years; or

38                          “(BB) deny the ~~claim.~~ **request.**

39          ~~“(C)”~~(D) NO LIMIT ON NUMBER OF EXTENSIONS.—There shall be no limit on the  
40          number of extensions granted under subparagraph ~~(B)~~(C), if the Administrator  
41          determines that the relevant ~~statement~~ **request** under subparagraph

~~(B)(ii)(I) — (C)(ii)(I) —~~

“(i) establishes the need to extend the period; and

“(ii) meets the requirements established by the Administrator.

“(2) REVIEW AND RESUBSTANTIATION. —

“(A) DISCRETION OF ADMINISTRATOR. — The Administrator may review, at any time, a claim for protection **of information** against disclosure under subsection (a) ~~for information submitted to the Administrator regarding a chemical substance~~ and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section —

“(i) after the chemical substance is identified as a high-priority substance under section 4A;

“(ii) for any chemical substance for which the Administrator has made a determination under section 6(c)(1)(C);

“(iii) for any inactive chemical substance identified under section 8(b)(5); or

“(iv) in limited circumstances, if the Administrator determines that disclosure of certain information currently protected from disclosure would assist the Administrator in conducting safety assessments and safety determinations under subsections (b) and (c) of section 6 or promulgating rules pursuant to section 6(d), ~~subject to the condition that the information shall not be disclosed unless the claimant withdraws the claim or the Administrator determines that the information does not meet the requirements of subsection (d).~~

“(B) REVIEW REQUIRED. — The Administrator shall review a claim for protection ~~from~~ **of information against** disclosure under subsection (a) ~~for information submitted to the Administrator regarding a chemical substance~~ and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section —

“(i) as necessary to ~~comply~~ **determine whether the information qualifies for an exemption from disclosure in connection** with a request for information received by the Administrator under section 552 of title 5, United States Code;

“(ii) ~~if information available to the Administrator provides a basis that the requirements of section 552(b)(4) of title 5, United States Code, are no longer met;~~ **the Administrator has a reasonable basis to believe that the information does not qualify for protection against disclosure under subsection (a);** or

“(iii) for any substance for which the Administrator has made a determination under section 6(c)(1)(B).

“(C) ACTION BY RECIPIENT. — If the Administrator makes a request under subparagraph (A) or (B), the recipient of the request shall —

1 “(i) reassert and substantiate or resubstantiate the claim; or

2 “(ii) withdraw the claim.

3 “(D) PERIOD OF PROTECTION.—Protection from disclosure of information subject to  
4 a claim that is reviewed and approved by the Administrator under this paragraph shall  
5 be extended for a period of 10 years from the date of approval, subject to any  
6 subsequent request by the Administrator under this paragraph.

7 “(3) UNIQUE IDENTIFIER.—The Administrator shall—

8 “(A)(i) develop a system to assign a unique identifier to each specific chemical  
9 identity for which the Administrator approves a request for protection from disclosure,  
10 other than a specific chemical identity or structurally descriptive generic term; and

11 “(ii) apply that identifier consistently to all information relevant to the applicable  
12 chemical substance;

13 “(B) annually publish and update a list of chemical substances, referred to by unique  
14 identifier, for which claims to protect the specific chemical identity from disclosure  
15 have been approved, including the expiration date for each such claim;

16 “(C) ensure that any nonconfidential information received by the Administrator with  
17 respect to such a chemical substance during the period of protection from disclosure—

18 “(i) is made public; and

19 “(ii) identifies the chemical substance using the unique identifier; and

20 “(D) for each claim for protection of specific chemical identity that has been denied  
21 by the Administrator ~~on expiration of the period for appeal under subsection (g)(4),~~  
22 ~~that has~~ or expired, or that has been withdrawn by the submitter, provide public access  
23 to the specific chemical identity clearly linked to all nonconfidential information  
24 received by the Administrator with respect to the chemical substance.

25 “(g) Duties of Administrator.—

26 “(1) DETERMINATION.—

27 “(A) IN GENERAL.—Except as provided in subsection (b), the Administrator shall,  
28 subject to subparagraph (C), not later than 90 days after the receipt of a claim under  
29 subsection (d), and not later than 30 days after the receipt of a request for extension of  
30 a claim under subsection (f), review and approve, modify, or deny the claim or request.

31 “(B) REASONS FOR DENIAL OR MODIFICATION.—**If the Administrator denies or**  
32 **modifies a claim or request under subparagraph (A) Denial or modification.—**

33 “(i) ~~In general.—~~ Except as provided in subsections (e) and (f), the Administrator  
34 shall **provide to the person that submitted the claim or request** ~~deny a claim to~~  
35 ~~protect a chemical identity from disclosure only if the person that has submitted the~~  
36 ~~claim fails to meet the requirements of subsections (a) and (d).~~

37 “(ii) ~~Reasons for denial or modification.—~~ The Administrator shall ~~provide to a~~  
38 ~~person that has submitted a claim described in clause (i) a written statement of the~~  
39 ~~reasons for the denial or modification of the claim~~ **or request.**

1 “(C) SUBSETS.—The Administrator shall—

2 “(i) except for claims described in subsection ~~(b)(7)~~**(b)(8)**, review all claims **or**  
3 **requests** under this section for the protection against disclosure of the specific  
4 identity of a chemical substance; and

5 “(ii) review a representative subset, comprising at least 25 percent, of all other  
6 claims **or requests** for protection against disclosure.

7 “(D) EFFECT OF FAILURE TO ACT.—The failure of the Administrator to make a  
8 decision regarding a claim **or request** for protection against disclosure or extension  
9 under this section shall not be the basis for denial or elimination of a claim **or request**  
10 for protection against disclosure.

11 “(2) NOTIFICATION.—

12 “(A) IN GENERAL.—Except as provided in subparagraph (B) and subsections (c), (e),  
13 and (f), if the Administrator denies or modifies a claim **or request** under paragraph (1),  
14 **intends to release information pursuant to subsection (e)**, or promulgates a rule  
15 under section 6(d) establishing a ban or phase-out of a chemical substance, the  
16 Administrator shall notify, in writing and by certified mail, the person that submitted  
17 the claim of the intent of the Administrator to release the information.

18 “(B) RELEASE OF INFORMATION.—~~Except information.~~—

19 “~~(i) In general.~~—~~Except as provided in clause (ii) subparagraph (C), the~~  
20 Administrator shall not release information under this subsection until the date that is  
21 30 days after the date on which the person that submitted the request receives  
22 notification under subparagraph (A).

23 “~~(ii)~~“(C) EXCEPTIONS.—

24 “~~(I)~~“(i) IN GENERAL.—For information under paragraph (3) or (8) of subsection  
25 (e), the Administrator shall not release that information until the date that is 15  
26 days after the date on which the person that submitted the claim **or request**  
27 receives a notification, unless the Administrator determines that release of the  
28 information is necessary to protect against an imminent and substantial harm to  
29 health or the environment, in which case no prior notification shall be necessary.

30 “(ii) NOTIFICATION AS SOON AS PRACTICABLE.—**For information under**  
31 **paragraphs (4) and (6) of subsection (e), the Administrator shall notify the**  
32 **person that submitted the information that the information has been**  
33 **disclosed as soon as practicable after disclosure of the information.**

34 “(iii) NO NOTIFICATION REQUIRED.—**Notification shall not be required—**

35 “**(I) for the disclosure of**—~~“(II) No notification.—For information under~~  
36 ~~paragraph (1), (2), (6), (7), or (9) of subsection (e), no prior notification shall~~  
37 ~~be necessary; or~~

38 “**(II) for the disclosure of information for which—**

39 “**(aa) a notice under subsection (f)(1)(C)(i) was received; and**

40 “**(bb) no request was received by the Administrator on or before**

1                   **the date of expiration of the period for which protection from**  
2                   **disclosure applies.**

3           “(3) REBUTTABLE PRESUMPTION.—

4                   “(A) IN GENERAL.—With respect to notifications provided by the Administrator  
5                   ~~pursuant to subsection (c)(5)~~ **under paragraph (2) with respect to information**  
6                   **pertaining to a chemical substance subject to a rule as described in subsection**  
7                   **(c)(3)**, there shall be a rebuttable presumption that the public interest in disclosing  
8                   confidential information related to a chemical substance subject to a rule promulgated  
9                   under section 6(d) that establishes a ban or phase-out of the manufacture, processing,  
10                  or distribution in commerce of the substance outweighs the proprietary interest in  
11                  maintaining the protection from disclosure of that information.

12                  “(B) REQUEST FOR NONDISCLOSURE.—A person that receives a notification under  
13                  paragraph (2) with respect to the information described in subparagraph (A) may  
14                  submit to the Administrator, before the date on which the information is to be released  
15                  **pursuant to paragraph (2)(B)**, a request with supporting documentation describing  
16                  why the person believes some or all of that information should not be disclosed.

17                  “(C) DETERMINATION BY ADMINISTRATOR.—

18                          “(i) IN GENERAL.—Not later than 30 days after the Administrator receives a  
19                          request under subparagraph (B), the Administrator shall determine, ~~at the~~  
20                          ~~discretion of the Administrator~~, whether the documentation provided by the  
21                          person making the request rebuts or does not rebut the presumption described in  
22                          subparagraph (A), for all or a portion of the information that the person has  
23                          requested not be disclosed.

24                          “(ii) OBJECTIVE.—The Administrator shall make the determination with the  
25                          objective of ensuring that information relevant to protection of health and the  
26                          environment is disclosed to the maximum extent practicable.

27                  “(D) TIMING.—Not later than 30 days after making the determination described in  
28                  subparagraph (C), the Administrator shall make public the information the  
29                  Administrator has determined is not to be protected from disclosure.

30                  “(E) NO TIMELY REQUEST RECEIVED.—If the Administrator does not receive, before  
31                  the date on which the information described in subparagraph (A) is to be released  
32                  **pursuant to paragraph (2)(B)**, a request pursuant to subparagraph (B), the  
33                  Administrator shall promptly make public all of the information.

34           “(4) APPEALS.—

35                          “(A) IN GENERAL.—If a person receives a notification under paragraph (2) and  
36                          believes disclosure of the information is prohibited under subsection (a), before the  
37                          date on which the information is to be released **pursuant to paragraph (2)(B)**, the  
38                          person may bring an action to restrain disclosure of the information in—

39                                  “(i) the United States district court of the district in which the complainant  
40                                  resides or has the principal place of business; or

41                                  “(ii) the United States District Court for the District of Columbia.

1           “(B) NO DISCLOSURE.—The Administrator shall not disclose any information that is  
2           the subject of an appeal under this section before the date on which the applicable  
3           court rules on an action under subparagraph (A).

4           ~~“(5) ADMINISTRATION.—IN CARRYING OUT THIS SUBSECTION, THE ADMINISTRATOR SHALL~~  
5           ~~USE THE PROCEDURES DESCRIBED IN PART 2 OF TITLE 40, CODE OF FEDERAL REGULATIONS~~  
6           ~~(OR SUCCESSOR REGULATIONS).~~ **REQUEST AND NOTIFICATION SYSTEM.—The**  
7           **Administrator, in consultation with the Director of the Centers for Disease Control**  
8           **and Prevention, shall develop a request and notification system that allows for**  
9           **expedient and swift access to information disclosed pursuant to paragraphs (5) and (6)**  
10          **of subsection (e) in a format and language that is readily accessible and**  
11          **understandable.**

12       “(h) Criminal Penalty for Wrongful Disclosure.—

13       “(1) OFFICERS AND EMPLOYEES OF UNITED STATES.—

14       “(A) IN GENERAL.—Subject to paragraph (2), a current or former officer or  
15       employee of the United States described in subparagraph (B) shall be guilty of a  
16       misdemeanor and fined under title 18, United States Code, or imprisoned for not more  
17       than 1 year, or both.

18       “(B) DESCRIPTION.—A current or former officer or employee of the United States  
19       referred to in subparagraph (A) is a current or former officer or employee of the United  
20       States who—

21           “(i) by virtue of that employment or official position has obtained possession  
22           of, or has access to, material the disclosure of which is prohibited by subsection  
23           (a); and

24           “(ii) knowing that disclosure of that material is prohibited by subsection (a),  
25           willfully discloses the material in any manner to any person not entitled to receive  
26           that material.

27       “(2) OTHER LAWS.—Section 1905 of title 18, United States Code, shall not apply with  
28       respect to the publishing, divulging, disclosure, making known of, or making available,  
29       information reported or otherwise obtained under this Act.

30       “(3) CONTRACTORS.—For purposes of this subsection, any contractor of the United States  
31       that is provided information in accordance with subsection (e)(2), including any employee  
32       of that contractor, shall be considered to be an employee of the United States.

33       “(i) Applicability.—

34       “(1) IN GENERAL.—Except as otherwise provided in this section, section 8, or any other  
35       applicable Federal law, the Administrator shall have no authority—

36           “(A) to require the substantiation or resubstantiation of a claim for the protection  
37           from disclosure of information ~~submitted to~~ **reported to or otherwise obtained by** the  
38           Administrator under this Act before the date of enactment of the Frank R. Lautenberg  
39           Chemical Safety for the 21st Century Act; or

40           “(B) to impose substantiation or resubstantiation requirements under this Act that  
41           are more extensive than those required under this section.

1       “(2) ~~PRIOR ACTIONS.—~~ **NOTHING ACTIONS PRIOR TO PROMULGATION OF**  
2       **RULES.—Nothing** in this Act prevents the Administrator from reviewing, requiring  
3       substantiation or resubstantiation for, or approving, modifying or denying any claim for the  
4       protection from disclosure of information before the effective date of such rules applicable  
5       to those claims as the Administrator may promulgate after the date of enactment of the  
6       Frank R. Lautenberg Chemical Safety for the 21st Century Act.”.

## 7       SEC. 15. PROHIBITED ACTS.

8       Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended by striking  
9       paragraph (1) and inserting the following:

10       “(1) fail or refuse to comply with—

11               “(A) any rule promulgated, consent agreement entered into, or order issued under  
12               section 4;

13               “(B) any requirement under section 5 or 6;

14               “(C) any rule promulgated, consent agreement entered into, or order issued under  
15               section 5 or 6; or

16               “(D) any requirement of, or any rule promulgated or order issued pursuant to title  
17               II;”.

## 18       SEC. 16. PENALTIES.

19       Section 16 of the Toxic Substances Control Act (15 U.S.C. 2615) is amended—

20       (1) in subsection (a)(1)—

21               (A) in the first **sentence**, ~~sentence~~—

22                       ~~(i) by inserting “this Act or a rule or order promulgated or issued pursuant to this~~  
23                       ~~Act, including” after “a provision of”; and~~

24                       ~~(ii)~~ by striking “\$25,000” and inserting “\$37,500”; and

25               (B) in the second sentence, by striking“ violation of section 15 or 409” and inserting  
26               “violation of this Act”; and

27       (2) in subsection (b)—

28               (A) by striking “Any person who” and inserting the following:

29               “(1) IN GENERAL.—Any person that”;

30               ~~(B) by striking “section 15 or 409” and inserting “this Act”;~~

31               ~~(C)~~ by striking “\$25,000” and inserting “\$50,000”; and

32               ~~(D)~~**(C)** by adding at the end the following:

33       “(2) IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.—

34               “(A) IN GENERAL.—Any person that knowingly or willfully violates any provision of  
35               **this Act section 15 or 409**, and that knows at the time of the violation that the violation  
36               places an individual in imminent danger of death or serious bodily injury, shall be

subject on conviction to a fine of not more than \$250,000, or imprisonment for not more than 15 years, or both.

“(B) ORGANIZATIONS.—An organization that commits a violation described in subparagraph (A) shall be subject on conviction to a fine of not more than \$1,000,000 for each violation.

~~“(3) Knowledge of imminent danger or injury.—For purposes of determining whether a defendant knew that the violation placed another individual in imminent danger of death or serious bodily injury—~~

~~“(A) the defendant shall be responsible only for actual awareness or actual belief possessed; and~~

~~“(B) knowledge possessed by an individual may not be attributed to the defendant.”“(C) INCORPORATION OF CORRESPONDING~~

**PROVISIONS.—Subparagraphs (B) through (F) of section 113(c)(5) of the Clean Air Act (42 U.S.C. 7413(c)(5)) shall apply to the prosecution of a violation under this paragraph.”.**

## SEC. 17. STATE-FEDERAL RELATIONSHIP.

Section 18 of the Toxic Substances Control Act (15 U.S.C. 2617) is amended by striking subsections (a) and (b) and inserting the following:

“(a) In General.—

“(1) ESTABLISHMENT OR ENFORCEMENT.—Except as provided in subsections (c), (d), (e), (f), and (g), and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

~~“(A) TESTING AND INFORMATION COLLECTION.—A TESTING.—A statute or administrative action to require the development of information on a chemical substance or category of substances that is reasonably likely to produce the same information required under section 4, 5, or 6 in—~~

~~“(i) a rule promulgated by the Administrator;~~

~~“(ii) a testing consent agreement entered into by the Administrator; or~~

~~“(iii) an order issued by the Administrator.~~

~~“(B) CHEMICAL SUBSTANCES FOUND TO MEET THE SAFETY STANDARD OR RESTRICTED.—A statute or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance—~~

~~“(i) found to meet the safety standard and consistent with the scope of the determination made under section 6; or~~

~~“(ii) found not to meet the safety standard, after the effective date of the rule issued under section 6(d) for the substance, consistent with the scope of the determination made by the Administrator.~~

~~“(C) SIGNIFICANT NEW USE.—A statute or administrative action requiring the notification of a use of a chemical substance that the Administrator has specified as a~~

significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

“(2) EFFECTIVE DATE OF PREEMPTION.—Under this subsection, Federal preemption of State statutes and administrative actions applicable to specific substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

“(b) New Statutes or Administrative Actions Creating Prohibitions or Other Restrictions.—

“(1) IN GENERAL.—Except as provided in subsections (c), (d), and (e), (f), and (g), beginning on the date on which the Administrator defines **and publishes** the scope of a safety assessment and safety determination under section 6(a)(2) and ending on the date on which the **deadline established pursuant to section 6(a) for completion of the safety determination expires, or on the date on which the** Administrator publishes the safety determination **under section 6(a), whichever is earlier**, no State or political subdivision of a State may establish a statute or administrative action prohibiting or restricting the manufacture, processing, distribution in commerce or use of a chemical substance that is a high-priority substance designated under section 4A.

“(2) EFFECT OF SUBSECTION.—

“(A) IN GENERAL.—This subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any State statute enacted, or administrative action taken, prior to the date on which the Administrator defines **and publishes** the scope of a safety assessment and safety determination under section 6(a)(2).

“(B) LIMITATION.—Subparagraph (A) does not allow a State or political subdivision of a State to enforce any new prohibition or restriction under a State statute or administrative action described in that subparagraph, if the prohibition or restriction is established after the date described in that subparagraph.

“(c) Scope of Preemption.—Federal preemption under subsections (a) and (b) of State statutes and administrative actions applicable to specific substances shall apply only to—

“(1) the chemical substances or category of substances subject to a rule, order, or consent agreement under section 4;

“(2) the uses or conditions of use of such substances that are identified by the Administrator as subject to review in a safety assessment and included in the scope of the safety determination made by the Administrator for the substance, or of any rule the Administrator promulgates pursuant to section 6(d); or

“(3) the uses of such substances that the Administrator has specified as significant new uses and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

“(d) Exceptions.—

“(1) NO PREEMPTION OF STATE STATUTES AND ADMINISTRATIVE ACTIONS.—

“(A) IN GENERAL.—Nothing in this Act, nor any amendment made by this Act, nor any rule, standard of performance, safety determination, or scientific assessment

implemented pursuant to this Act, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, safety determination, scientific assessment, or any protection for public health or the environment that—

“(i) is adopted or authorized under the authority of any other Federal law or adopted to satisfy or obtain authorization or approval under any other Federal law;

“(ii) implements a reporting, monitoring, disclosure, or other information obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law;

“(iii) is adopted pursuant to authority under a law of the State or political subdivision of the State related to water quality, air quality, or waste treatment or disposal, except to the extent that the action—

“(I) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

“(II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the safety determination pursuant to section 6, but is inconsistent with the action of the Administrator; or

“(bb) would cause a violation of the applicable action by the Administrator under section 5 or 6; or

“(iv) subject to subparagraph (B), is identical to a requirement prescribed by the Administrator.

“(B) IDENTICAL REQUIREMENTS.—

“(i) ~~IN GENERAL.—~~The penalties and other sanctions applicable under ~~State law~~ **a law of a State or political subdivision of a State** in the event of noncompliance with the identical requirement shall be no more stringent than the penalties and other sanctions available to the Administrator under section 16 of this Act.

“(ii) ~~PENALTIES.—In the case of an identical requirement, no State may~~ **requirement—**

**“(I) a State or political subdivision of a State may not** assess a penalty for a specific violation for which the Administrator has ~~already assessed a~~ **an adequate** penalty under section 16, ~~and; and~~

**“(II) if a State or political subdivision of a State has assessed a penalty for a specific violation, the Administrator may not assess a penalty under section 16 for a specific violation for which a State has already assessed a penalty. for that violation in an amount that would cause the total of the penalties assessed for the violation by the State or political subdivision of a State and the Administrator combined to exceed the maximum amount that may be assessed for that violation by the Administrator under section 16.**

1 “(2) APPLICABILITY TO CERTAIN RULES OR ORDERS.—Notwithstanding subsection (e)—

2 “(A) nothing in this section shall be construed as modifying the effect under this  
3 section, as in effect on the day before the effective date of the Frank R. Lautenberg  
4 Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued  
5 under this Act prior to that effective date; and

6 “(B) with respect to a chemical substance or mixture for which any rule or order was  
7 promulgated or issued under section 6 prior to the effective date of the Frank R.  
8 Lautenberg Chemical Safety for the 21st Century Act with regards to manufacturing,  
9 processing, distribution in commerce, use, or disposal of a chemical substance, this  
10 section (as in effect on the day before the effective date of the Frank R. Lautenberg  
11 Chemical Safety for the 21st Century Act) shall govern the preemptive effect of any  
12 rule or order that is promulgated or issued respecting such chemical substance or  
13 mixture under section 6 of this Act after that effective date, unless the latter rule or  
14 order is with respect to a chemical substance or mixture containing a chemical  
15 substance and follows a designation of that chemical substance as a high-priority  
16 substance under **subsection (b) or (c) of section 4A(b)** or as an additional priority for  
17 safety assessment and safety determination under section 4A(c).

18 “(e) Preservation of Certain ~~State Law~~.— **Laws**.—

19 “(1) IN GENERAL.—Nothing in this Act, subject to subsection (g) of this section, shall—

20 “(A) be construed to preempt or otherwise affect the authority of a State or political  
21 subdivision of a State to continue to enforce any action taken before August 1, 2015,  
22 under the authority of a ~~State law~~ **law of the State or political subdivision of the**  
23 **State** that prohibits or otherwise restricts manufacturing, processing, distribution in  
24 commerce, use, or disposal of a chemical substance; or

25 “(B) be construed to preempt or otherwise affect any action taken pursuant to a State  
26 law that was in effect on August 31, 2003.

27 “(2) EFFECT OF SUBSECTION.—This subsection does not affect, modify, or alter the  
28 relationship between ~~State and Federal law~~ **Federal law and laws of a State or political**  
29 **subdivision of a State** pursuant to any other Federal law.

30 “(f) State Waivers.—

31 “(1) DISCRETIONARY EXEMPTIONS.—Upon application of a State or political subdivision  
32 of a State, the Administrator may by rule, exempt from subsection (a), under such  
33 conditions as may be prescribed in the rule, a statute or administrative action of that State or  
34 political subdivision of the State that relates to the effects of, or exposure to, a chemical  
35 substance under the conditions of use if the Administrator determines that—

36 “(A) compelling ~~State or local~~ conditions warrant granting the waiver to protect  
37 health or the environment;

38 “(B) compliance with the proposed requirement of the State or political subdivision  
39 of the State would not unduly burden interstate commerce in the manufacture,  
40 processing, distribution in commerce, or use of a chemical substance;

41 “(C) compliance with the proposed requirement of the State or political subdivision

of the State would not cause a violation of any applicable Federal law, rule, or order;  
and

“(D) ~~based on~~ **in** the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is ~~consistent with sound objective scientific practices, the weight of the evidence, and~~ **designed to address a risk of a chemical substance, under the conditions of use, that was identified—**

“(i) **consistent with** the best available science;

“(ii) **using supporting studies conducted in accordance with sound and objective scientific practices; and**

“(iii) **based on the weight of the scientific evidence.**

“(2) REQUIRED EXEMPTIONS.—Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

“(A) compliance with the proposed requirement of the State ~~will~~ **or political subdivision of the State would** not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

“(B) compliance with the proposed requirement **of the State or political subdivision of the State** would not cause a violation of any applicable Federal law, rule, or order; and

“(C) the State or political subdivision of ~~a~~ **the** State has a concern about the chemical substance or use of the chemical substance based in peer-reviewed science.

“(3) DETERMINATION OF A ~~STATE~~ WAIVER REQUEST.—The duty of the Administrator to grant or deny a waiver application shall be nondelegable and shall be exercised—

“(A) not later than 180 days after the date on which an application under paragraph (1) is submitted; and

“(B) not later than ~~90~~ **110** days after the date on which an application under paragraph (2) is submitted.

“(4) FAILURE TO MAKE DETERMINATION.—If the Administrator fails to make a determination under paragraph (3)(B) during the ~~90~~ **110**-day period beginning on the date on which an application under paragraph (2) is submitted, the ~~State~~ **of the State or political subdivision of the State** statute or administrative action **of the State or political subdivision of the State** that was the subject of the application shall not be considered to be an existing statute or administrative action for purposes of subsection (b) by reason of the failure of the Administrator to make a determination.

“(5) NOTICE AND COMMENT.—Except in the case of an application approved under paragraph (9), the application of a State or political subdivision of ~~the~~ **a** State shall be subject to public notice and comment.

“(6) FINAL AGENCY ACTION.—The decision of the Administrator on the application of a State or political subdivision of ~~the~~ **a** State shall be—

“ (A) considered to be a final agency action; and

“ (B) subject to judicial review.

“ (7) DURATION OF WAIVERS.— ~~A~~ waivers.—

“ (A) In general.— Except as provided in subparagraph (B), a waiver granted under paragraph (2) or approved under paragraph (9) shall remain in **effect** ~~effect~~—

“ (i) until such time as the safety assessment and safety determination is completed; or  
**Administrator publishes the safety determination under section 6(a)(4).**

“ (ii) subject to subparagraph (B), until judicial review of the failure of the Administrator to make a determination under paragraph (3) is sought under paragraph (8).

“ (B) Reinstatement of waiver.— A waiver described in subparagraph (A)(ii) shall again take effect upon the earlier of—

“ (i) the date of approval by the Administrator of the waiver application; or

“ (ii) the effective date of a court order directing the Administrator to approve the waiver application; or

“ (iii) ~~90~~ “ (8) JUDICIAL REVIEW OF WAIVERS.— Not later than 60 days after the date on which judicial review under paragraph (8) is sought.

“ (8) Judicial review of waivers.— Not later than 60 days after the date on which the Administrator makes a determination on an application of a State or political subdivision of the a State under paragraph (1) or (2), or not later than 60 days after the date on which the Administrator fails to make a determination under paragraph (3), any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

“ (9) APPROVAL.—

“ (A) ~~IN GENERAL.~~— ~~IF~~ **AUTOMATIC APPROVAL.**— If the Administrator fails to meet the deadline under section 6(a)(4) (including an extension granted under section 6(a)(6)), or the deadline established under paragraph (3)(B), the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved, **effective on the date that is 10 days after the deadline.**

“ (B) REQUIREMENTS.— Notwithstanding paragraph (6), approval of a waiver application under subparagraph (A) for failure to meet the deadlines under section 6(a)(4) (including an extension granted under section 6(a)(6)) **deadline under paragraph (3)(B)** shall not be considered final agency action or be subject to judicial review or public notice and comment.

“ (10) ~~Judicial review of low priority decisions.~~—

“ (A) In general.— Not later than 60 days after the publication of a designation under section 4A(b)(4), any person may commence a civil action to challenge the designation.

\* 5 “ (B) Jurisdiction.— The United States Court of Appeals for the District of Columbia

~~Circuit shall have exclusive jurisdiction over a civil action filed under this paragraph.~~

“(g) Savings.—

“(1) NO PREEMPTION OF COMMON LAW OR STATUTORY CAUSES OF ACTION FOR CIVIL RELIEF OR CRIMINAL CONDUCT.—

“(A) IN GENERAL.—Nothing in this Act, nor any amendment made by this Act, nor any safety standard, rule, requirement, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall be construed to preempt, displace, or supplant any state or Federal common law rights or any state or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

“(B) CLARIFICATION OF NO PREEMPTION.—Notwithstanding any other provision of this Act, nothing in this Act, nor any amendments made by this Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

“(2) NO EFFECT ON PRIVATE REMEDIES.—

“(A) IN GENERAL.—Nothing in this Act, nor any amendments made by this Act, nor any rules, regulations, requirements, safety assessments, safety determinations, scientific assessments, or orders issued pursuant to this Act shall be interpreted as, in either the plaintiff’s or defendant’s favor, dispositive in any civil action.

“(B) AUTHORITY OF COURTS.—This Act does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this Act or rules, regulations, requirements, standards of performance, safety assessments, scientific assessments, or orders issued pursuant to this Act.”.

## SEC. 18. JUDICIAL REVIEW.

Section 19 of the Toxic Substances Control Act (15 U.S.C. 2618) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A),~~(A)~~—

**(I) in the first sentence—**

**(aa) by striking “Not” and inserting “Except as otherwise provided in this title, not”;**

**(bb) by striking “section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8, or under title II or IV” and inserting “section 4(a), 5(d), 6(e), 6(d), 6(g), or 8, or title II or IV”; and “this title or title II or IV, or an order under section 6(c)(1)(A)”;** and

**(ii) in subparagraph (B), (cc) by striking “judicial review of such**

rule” and inserting “judicial review of such rule or order”; and  
(II) in the second sentence, by striking “such a rule” and inserting  
“such a rule or order”; and

(ii) in subparagraph (B)—

(I) by striking “Courts” and inserting “Except as otherwise provided  
in this title, courts”; and

(II) by striking “an order issued under subparagraph (A) or (B) of section  
6(b)(1)” and inserting “an order issued under this title”; and

(B) in paragraph (2), in the first second sentence, by striking “~~paragraph (1)(A)~~” and  
inserting “~~paragraph (1)~~” “the filing of the rulemaking record of proceedings on  
which the Administrator based the rule being reviewed” and inserting “the filing  
of the record of proceedings on which the Administrator based the rule or order  
being reviewed”; and

(C) by striking paragraph (3) ; and and inserting the following:

“(3) JUDICIAL REVIEW OF LOW-PRIORITY DECISIONS.—

“(A) IN GENERAL.—Not later than 60 days after the publication of a designation  
under section 4A(b)(4), or a designation under section 4A(b)(8) of a chemical  
substance as a low-priority substance, any person may commence a civil action to  
challenge the designation.

\*\* 5 “(B) JURISDICTION.—The United States Court of Appeals for the District of  
Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this  
paragraph. paragraph.”; and

(2) in subsection (c)(1)(B)—

(A) in clause (i)—

(i) by striking “section 4(a), 5(b)(4), 6(a), or 6(e)” and inserting “section 4(a),  
5(d), 6(d), or 6(g)”; 6(d), or 6(g), or an order under section 6(c)(1)(A)”; and

(ii) by striking “evidence in the rulemaking record (as defined in subsection  
(a)(3)) taken as a whole;” and inserting “evidence (including any matter) in the  
rulemaking record, taken as a whole; and”; and

(B) by striking clauses (ii) and (iii) and the matter following clause (iii) and inserting  
the following:

“(ii) the court may not review the contents and adequacy of any statement of  
basis and purpose required by section 553(c) of title 5, United States Code, to be  
incorporated in the rule, except as part of the rulemaking record, taken as a  
whole.”.

## SEC. 19. CITIZENS’ CIVIL ACTIONS.

Section 20 of the Toxic Substances Control Act (15 U.S.C. 2619) is amended—

(1) in subsection (a)(1), by striking “or order issued under section 5” and inserting

“or order issued under section 4 or 5”; and

(2) in subsection (b)—

(A) in paragraph (1)(B), by striking “or” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “, except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B); or”; and

(C) by adding at the end the following:

“(3) in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B), after the date that is 60 days after the deadline specified in section 18(f)(3)(B).”.

## SEC. 20. CITIZENS’ PETITIONS.

Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amended—

(1) in subsection (a), by striking “an order under section 5(e) or 6(b)(2)” and inserting “an order under section 4 or 5(d)”; and

(2) in subsection (b)—

(A) in paragraph (1), by striking “an order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)” and inserting “an order under section 4 or 5(d)”; and

(B) in paragraph (4), by striking subparagraph (B) and inserting the following:

“(B) DE NOVO PROCEEDING.—

“(i) IN GENERAL.—In an action under subparagraph (A) to initiate a proceeding to promulgate issue a rule pursuant to section 4, 5, 6, or 8 or issue an order under section 4 or 5(d), the petitioner shall be provided an opportunity to have the petition considered by the court in a de novo proceeding.

“(ii) DEMONSTRATION.—

“(I) IN GENERAL.—The court in a de novo proceeding under this subparagraph shall order the Administrator to initiate the action requested by the petitioner if the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

“(aa) in the case of a petition to initiate a proceeding for the issuance of a rule or order under section 4, the information ~~available to the Administrator is insufficient for the Administrator to perform an action described in section 4, 4A, 5, or 6(d);~~ is needed for a purpose identified in section 4(a);

“(bb) in the case of a petition to issue an order under section 5(d), ~~there is a reasonable basis to conclude that~~ the chemical substance is not likely to meet the safety standard;

“(cc) in the case of a petition to initiate a proceeding for the issuance of a rule under section 6(d), ~~there is a reasonable basis to conclude that~~

the chemical substance ~~will~~ **does** not meet the safety standard; or

“(dd) in the case of a petition to initiate a proceeding for the issuance of a rule under section 8, there is a reasonable basis to conclude that the rule is necessary to protect health or the environment or ensure that the chemical substance meets the safety standard.

“(II) DEFERMENT.—The court in a de novo proceeding under this subparagraph may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes, if the court finds that—

“(aa) the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this Act; and

“(bb) there are insufficient resources available to the Administrator to take the action requested by the petitioner.”.

## SEC. ~~20~~ **21**. EMPLOYMENT EFFECTS.

Section 24(b)(2)(B)(ii) of the Toxic Substances Control Act (15 U.S.C. 2623(b)(2)(B)(ii)) is amended by striking “section 6(c)(3),” and inserting “the applicable requirements of this Act;”.

## SEC. ~~24~~ **22**. STUDIES.

Section 25 of the Toxic Substances Control Act (15 U.S.C. 2624) is repealed.

## SEC. ~~22~~ **23**. ADMINISTRATION.

Section 26 of the Toxic Substances Control Act (15 U.S.C. 2625) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) Fees.—

“(1) IN GENERAL.—The Administrator shall establish, not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, by rule—

“(A) the payment of 1 or more reasonable fees as a condition of submitting a notice or requesting an exemption under section 5; **and**

“(B) the payment of 1 or more reasonable fees by a manufacturer or processor that—

“(i) is required to submit a notice pursuant to the rule promulgated under section 8(b)(4)(A)(i) identifying a chemical substance as active;

“(ii) is required to submit a notice pursuant to section 8(b)(5)(B)(i) changing the status of a chemical substance from inactive to active;

“(iii) is required to report information pursuant to the rules promulgated under **paragraph (1) or (4) of** section 8(a)(4); ~~and; or~~

“(iv) manufactures or processes a chemical substance subject to a safety

assessment and safety determination pursuant to section 6.

“(2) UTILIZATION AND COLLECTION OF FEES.—The Administrator shall—

“(A) utilize the fees collected under paragraph (1) only to defray costs associated with the actions of the Administrator—

“(i) to collect, process, review, provide access to, and protect from disclosure (where appropriate) information on chemical substances under this Act;

“(ii) to review notices and make determinations for chemical substances under paragraphs (1) and (3) of section 5(d) and impose any necessary restrictions under section 5(d)(4);

“(iii) to make prioritization decisions under section 4A;

“(iv) to conduct and complete safety assessments and determinations under section 6; and

“(v) to conduct any necessary rulemaking pursuant to section 6(d);

“(B) insofar as possible, collect the fees described in paragraph (1) in advance of conducting any fee-supported activity;

“(C) deposit the fees in the Fund established by paragraph (4)(A); and

“(D) **insofar as possible**, not collect excess fees or retain a significant amount of unused fees.

“(3) AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

~~“(A) take into account the cost to the Administrator of conducting the activities described in paragraph (2);~~

~~“(B) prescribe lower fees for small business concerns, after consultation with the Administrator of the Small Business Administration;~~

~~“(C)“(B) set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to defray approximately annually~~  
**defray—**

**“(i) the lower of—**

**“(I) 25 percent of the costs of conducting the activities identified in paragraph (2)(A), not to exceed \$18,000,000, not including fees under subparagraph (E) of this paragraph; other than the costs to conduct and complete safety assessments and determinations under section 6 for chemical substances identified pursuant to section 4A(c); or**

~~“(D)“(II) \$25,000,000 (subject to adjustment pursuant to subparagraph (F)); and~~

**“(ii) the full costs and the 50-percent portion of the costs of safety assessments and safety determinations specified in subparagraph (D);**

**“(C) reflect an appropriate balance in the assessment of fees between manufacturers**

and processors, and allow the payment of fees by consortia of manufacturers or processors;

**“(D) notwithstanding subparagraph (B) and paragraph (4)(D)—**

**“(i)”—**~~(E)~~ for substances designated as additional priorities pursuant to section 4A(c)(1), establish the fee at a level sufficient to defray the full **annual** costs to the Administrator of conducting the safety assessment and safety determination under section 6, ~~except that; and~~

**“(ii) for substances subject designated pursuant to section 4A(c)(3), the Administrator shall establish the fee at a level sufficient to defray 50 percent of those costs; the annual costs to the Administrator of conducting the safety assessment and safety determination under section 6;**

~~“(F)”—~~**“(E) prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter III of chapter 5 of title 5, United States Code, is applicable with respect to such meetings;**

~~“(G)”—~~**“(F) beginning with the fiscal year that is 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and every 3 years thereafter, after consultation with parties potentially subject to the fees and their representatives pursuant to subparagraph (E), increase or decrease the fees established under paragraph (1) as necessary to adjust for inflation and to ensure, based on the audit analysis required under paragraph (5)(B), necessary—**

~~“(i) to ensure—~~ that funds deposited in the Fund are sufficient to **defray—**

**“(i) approximately but not more than 25 percent of the annual costs to conduct the activities identified in paragraph (2)(A) and the full, other than the costs to conduct and complete safety assessments and determinations under section 6 for chemical substances identified pursuant to section 4A(c); and**

**“(ii) the full annual costs and the 50-percent portion of the annual costs of safety assessments and safety determinations pursuant to specified in subparagraph (E); and (D);**

~~“(ii) to account for inflation;~~

~~“(H)”—~~**“(G) adjust fees established under paragraph (1) as necessary to vary on account of differing circumstances, including reduced fees or waivers in appropriate circumstances, to reduce the burden on manufacturing or processing, remove barriers to innovation, or where the costs to the Administrator of collecting the fees exceed the fee revenue anticipated to be collected; and**

~~“(I)”—~~**“(H) if a notice submitted under section 5 is refused or subsequently withdrawn, refund the fee or a portion of the fee if no substantial work was performed on the notice.**

**“(4) TSCA IMPLEMENTATION FUND.—**

**“(A) ESTABLISHMENT.—**There is established in the Treasury of the United States a

fund, to be known as the ‘TSCA Implementation Fund’ (referred to in this subsection as the ‘Fund’), consisting of—

“(i) such amounts as are deposited in the Fund under paragraph (2)(C); and

“(ii) any interest earned on the investment of amounts in the Fund; and

“(iii) any proceeds from the sale or redemption of investments held in the Fund.

“(B) CREDITING AND AVAILABILITY OF FEES.—

“(i) IN GENERAL.—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, and shall be available without fiscal year limitation.

“(ii) REQUIREMENTS.—Fees collected under this section shall not—

“(I) be made available or obligated for any purpose other than to defray the costs of conducting the activities identified in paragraph (2)(A);

“(II) otherwise be available for any purpose other than implementation of this Act; and

“(III) so long as amounts in the Fund remain available, be subject to restrictions on expenditures applicable to the Federal government as a whole.

“(C) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this subsection shall be—

“(i) maintained readily available or on deposit;

“(ii) invested in obligations of the United States or guaranteed by the United States; or

“(iii) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

“(D) MINIMUM AMOUNT OF APPROPRIATIONS.—Fees may not be assessed for a fiscal year under this section unless the amount of appropriations for ~~salaries, contracts, and expenses for the functions (as in existence in fiscal year 2015) of the Office of Pollution Prevention and Toxics~~ **the Chemical Risk Review and Reduction program project** of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for ~~covered functions for fiscal year 2015 (excluding the amount of any fees appropriated for the fiscal year).~~ **that program project for fiscal year 2014.**

“(5) AUDITING.—

“(A) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

“(B) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this subsection shall include an analysis of—

“(i) the fees collected under paragraph (1) and disbursed;

“(ii) compliance with the deadlines established in section 6 of this Act;

“(iii) the amounts budgeted, appropriated, collected from fees, and disbursed to meet the requirements of sections 4, 4A, 5, 6, 8, and 14, including the allocation of full time equivalent employees to each such section or activity; and

“(iv) the reasonableness of the allocation of the overhead associated with the conduct of the activities described in paragraph (2)(A).

“(C) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

“(i) conduct the annual audit required under this subsection; and

“(ii) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

“(6) TERMINATION.—The authority provided by this section shall terminate at the conclusion of the fiscal year that is 10 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, unless otherwise reauthorized or modified by Congress.”;

(2) in subsection (e), by striking “Health, Education, and Welfare” each place it appears and inserting “Health and Human Services”; and

(3) adding at the end the following:

“(h) Prior Actions.—Nothing in this Act eliminates, modifies, or withdraws any rule promulgated, order issued, or exemption established pursuant to this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.”.

## SEC. 24. DEVELOPMENT AND EVALUATION OF TEST METHODS AND SUSTAINABLE CHEMISTRY.

**Section(a) In General.**—Section 27 of the Toxic Substances Control Act (15 U.S.C. 2626) is amended—

(1) in subsection (a), in the first sentence by striking “Health, Education, and Welfare” and inserting “Health and Human Services”; and

(2) by adding at the end the following:

**“(c) Sustainable Chemistry Program.**—The President shall establish **National Coordinating Entity for Sustainable Chemistry.**—

**“(1) ESTABLISHMENT.**—Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Director of the Office of Science and Technology Policy shall convene an entity under the National Science and Technology Council with the responsibility to coordinate Federal programs and activities in support of sustainable chemistry, including, as appropriate, at the National Science Foundation, the Department of Energy, the Department of Agriculture, the Environmental Protection Agency, the National Institute of Standards and Technology, the Department of Defense, the National Institutes of Health, and

1       other related Federal agencies.

2       “(2) CHAIRMAN.—The entity described in paragraph (1) shall be chaired by the  
3       Director of the National Science Foundation and the Assistant Administrator for the  
4       Office of Research and Development of the Environmental Protection Agency, or their  
5       designees.

6       “(3) DUTIES.—

7           “(A) IN GENERAL.—The entity described in paragraph (1) shall—

8               “(i) develop a working definition of sustainable chemistry, after seeking  
9               advice and input from stakeholders as described in clause (v);

10              “(ii) oversee the planning, management, and coordination of the  
11              Sustainable Chemistry Initiative described in subsection (d);

12              “(iii) develop a national strategy for sustainable chemistry as described in  
13              subsection (f);

14              “(iv) develop an implementation plan for sustainable chemistry as  
15              described in subsection (g); and

16              “(v) consult and coordinate with stakeholders qualified to provide advice  
17              and information on the development of the initiative, national strategy, and  
18              implementation plan for sustainable chemistry, at least once per year, to  
19              carry out activities that may include workshops, requests for information,  
20              and other efforts as necessary.

21           “(B) STAKEHOLDERS.—The stakeholders described in subparagraph (A)(v)  
22           shall include representatives from—

23               “(i) industry (including small- and medium-sized enterprises from across  
24               the value chain);

25               “(ii) the scientific community (including the National Academy of Sciences,  
26               scientific professional societies, and academia);

27               “(iii) the defense community;

28               “(iv) State, tribal, and local governments;

29               “(v) State or regional sustainable chemistry programs;

30               “(vi) nongovernmental organizations; and

31               “(vii) other appropriate organizations.

32       “(4) SUNSET.—

33           “(A) IN GENERAL.—On completion of the national strategy and accompanying  
34           implementation plan for sustainable chemistry as described in paragraph (3), the  
35           Director of the Office of Science and Technology Policy—

36               “(i) shall review the need for further work; and

37               “(ii) may disband the entity described in paragraph (1) if no further efforts  
38               are determined to be necessary.

1           “(B) NOTICE AND JUSTIFICATION.—The Director of the Office of Science and  
2           Technology Policy shall provide notice and justification, including an analysis of  
3           options to establish the Sustainable Chemistry Initiative described in subsection  
4           (d) and the partnerships described in subsection (e) within 1 or more appropriate  
5           Federal agencies, regarding a decision to disband the entity not less than 90 days  
6           prior to the termination date to the Committee on Science, Space, and Technology  
7           and the Committee on Energy and Commerce of the House of Representatives  
8           and the Committee on Environment and Public Works and the Committee on  
9           Commerce, Science, and Transportation of the Senate.

10          “(d) Sustainable Chemistry Initiative.—The entity described in subsection (c)(1) shall  
11          oversee the establishment of an interagency Sustainable Chemistry Program Initiative to  
12          promote and coordinate Federal sustainable chemistry research, development, demonstration,  
13          technology transfer, commercialization, education, and training activities: activities designed—

14           ~~“(d) Program Activities.—The activities of the Program shall be designed to—~~

15           ~~“(1)“(1) to provide sustained support for sustainable chemistry research, development,~~  
16           ~~demonstration, technology transfer, commercialization, education, and training through—~~

17           “(A) coordination **and promotion** of sustainable chemistry research, development,  
18           demonstration, and technology transfer conducted at Federal **and national** laboratories  
19           and agencies; and

20           **Federal agencies and at public and private institutions of higher education;**  
21           **and**

22           “(B) to the extent practicable, encouragement of consideration of sustainable  
23           chemistry in, as appropriate—

24           “(i) the conduct of Federal ~~and~~, State, **and private** science and engineering  
25           research and development; and

26           “(ii) the solicitation and evaluation of applicable proposals for science and  
27           engineering research and development;

28           “(2) **to** examine methods by which the Federal Government can ~~create~~ **offer** incentives  
29           for consideration and use of sustainable chemistry processes and products, ~~including that~~  
30           **encourage competition and overcoming market barriers, including grants, loans, loan**  
31           **guarantees, and** innovative financing mechanisms;

32           “(3) **to** expand the education and training of undergraduate and graduate students and  
33           professional scientists and engineers, including through partnerships with industry **as**  
34           **described in subsection (e)**, in sustainable chemistry science and engineering;

35           “(4) **to** collect and disseminate information on sustainable chemistry research,  
36           development, and technology transfer, including information on—

37           “(A) incentives and impediments to development, manufacturing, and  
38           commercialization;

39           “(B) accomplishments;

40           “(C) best practices; and

1           “(D) costs and benefits; **and**

2           “(5) to support (including through technical assistance, participation, financial support, or  
3           other forms of support) economic, legal, and other appropriate social science research to  
4           identify barriers to commercialization and methods to advance commercialization of  
5           sustainable chemistry.

6           “(e) Interagency Working Group.— **Partnerships in Sustainable Chemistry.—**

7           ~~“(1) Establishment.— Not later than 180 days after the date of enactment of the Frank R.~~  
8           ~~Lautenberg Chemical Safety for the 21st Century Act, the President, in consultation with~~  
9           ~~the Office of Science and Technology Policy, shall establish an Interagency Working Group~~  
10           ~~that shall include representatives from the National Science Foundation, the National~~  
11           ~~Institute of Standards and Technology, the Department of Energy, the Environmental~~  
12           ~~Protection Agency, the Department of Agriculture, the Department of Defense, the National~~  
13           ~~Institutes of Health, and any other agency that the President may designate to oversee the~~  
14           ~~planning, management, and coordination of the Program.~~

15           ~~“(2) Governance.— The Director of the National Science Foundation and the Assistant~~  
16           ~~Administrator for Research and Development of the Environmental Protection Agency, or~~  
17           ~~their designees, shall serve as co-chairs of the Interagency Working Group.~~

18           ~~“(3) Responsibilities.— In overseeing the planning, management, and coordination of the~~  
19           ~~Program, the Interagency Working Group shall—~~

20           ~~“(A) establish goals and priorities for the Program, in consultation with the Advisory~~  
21           ~~Council;~~

22           ~~“(B) provide for interagency coordination, including budget coordination, of activities~~  
23           ~~under the Program;~~

24           ~~“(C) meet not later than 90 days from its establishment and periodically thereafter; and~~

25           ~~“(D) establish and consult with an Advisory Council on a regular basis.~~

26           ~~“(4) Membership.— The Advisory Council members shall not be employees of the~~  
27           ~~Federal Government and shall include a diverse representation of knowledgeable~~  
28           ~~individuals from the private sector (“(1) IN GENERAL.— The entity described in~~  
29           ~~subsection (c)(1), itself or through an appropriate subgroup designated or established~~  
30           ~~by the entity, shall work through the agencies described in subsection (c)(1) to support,~~  
31           ~~through financial, technical, or other assistance, the establishment of partnerships~~  
32           ~~between institutions of higher education, nongovernmental organizations, consortia,~~  
33           ~~and companies across the value chain in the chemical industry, including small- and~~  
34           ~~medium-sized enterprises from across the value chain), academia, State and tribal~~  
35           ~~governments, and nongovernmental organizations and others who are in a position to~~  
36           ~~provide expertise.~~

37           ~~“(f) Agency Budget Requests.—~~

38           ~~“(1) In general.— Each Federal agency and department participating in the Program shall,~~  
39           ~~as part of its annual request for appropriations to the Office of Management and Budget,~~  
40           ~~submit a report to the Office of Management and Budget that—~~

41           ~~“(A) identifies the activities of the agency or department that contribute directly to the~~

Program; and

~~“(B) states the portion of the agency or department’s request for appropriations that is allocated to those activities.~~

~~“(2) Annual budget request to congress.—The President shall include in the annual budget request to Congress a statement of the portion of the annual budget request for each agency or department that will be allocated to activities undertaken pursuant to the Program.~~

~~“(g) Report enterprises—~~

**“(A) to establish collaborative research, development, demonstration, technology transfer, and commercialization programs; and**

**“(B) to train students and retrain professional scientists and engineers in the use of sustainable chemistry concepts and strategies by methods including—**

**“(i) developing curricular materials and courses for undergraduate and graduate levels and for the professional development of scientists and engineers; and**

**“(ii) publicizing the availability of professional development courses in sustainable chemistry and recruiting scientists and engineers to pursue those courses.**

**“(2) PRIVATE SECTOR ENTITIES.—To be eligible for support under this section, a partnership in sustainable chemistry shall include at least 1 private sector entity.**

**“(3) SELECTION OF PARTNERSHIPS.—In selecting partnerships for support under this section, the entity and the agencies described in subsection (c)(1) shall also consider the extent to which the applicants are willing and able to demonstrate evidence of support for, and commitment—**

**“(A) to achieving the goals of the Sustainable Chemistry Initiative described in subsection (d); and**

**“(B) to sustaining any new innovations, tools, and resources generated from funding under the program.**

**“(4) PROHIBITED USE OF FUNDS.—Financial support provided under this section may not be used—**

**“(A) to support or expand a regulatory chemical management program at an implementing agency under a State law; or**

**“(B) to construct or renovate a building or structure.**

**“(f) National Strategy to Congress.—**

**“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the ~~Interagency Working Group~~ entity described in subsection (c)(1) shall submit a report to the Committee on Science, Space, and Technology and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate, a national strategy that shall include—**

1 “(A) a summary of federally funded sustainable chemistry research, development,  
2 demonstration, technology transfer, commercialization, education, and training  
3 activities;

4 “(B) a summary of the financial resources allocated to sustainable chemistry  
5 initiatives;

6 “(C) an analysis of the progress made toward achieving the goals and priorities of  
7 the ~~program established pursuant to~~ **Sustainable Chemistry Initiative described in**  
8 ~~subsection (e)(d), and recommendations for future program activities;~~ **initiative**  
9 **activities, including consideration of options to establish the Sustainable**  
10 **Chemistry Initiative and the partnerships described in subsection (e) within 1 or**  
11 **more appropriate Federal agencies;**

12 “(D) an assessment of the benefits of expanding existing, federally -supported  
13 regional innovation and manufacturing hubs to include sustainable chemistry and the  
14 value of directing the ~~creation~~ **establishment** of 1 or more dedicated sustainable  
15 chemistry centers of excellence or hubs; ~~and~~

16 “(E) an evaluation of steps taken and future strategies to avoid duplication of efforts,  
17 streamline interagency coordination, facilitate information sharing, and spread best  
18 practices between participating agencies in the ~~Program~~.

19 **Sustainable Chemistry Initiative; and**

20 “(F) a framework for advancing sustainable chemistry research, development,  
21 technology transfer, commercialization, and education and training.

22 “(2) SUBMISSION TO GAO.—The Interagency Working Group shall also submit the report  
23 **entity described in subsection (c)(1) shall submit the national strategy** described in  
24 paragraph (1) to the Government Accountability Office for consideration in future  
25 Congressional ~~inquiries.~~ **inquiries.**

26 **SEC. 24“(g) Implementation Plan.—Not later than 3 years after the date of enactment of**  
27 **the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the entity described in**  
28 **subsection (c)(1) shall submit to the Committee on Science, Space, and Technology and the**  
29 **Committee on Energy and Commerce of the House of Representatives and the Committee**  
30 **on Environment and Public Works and the Committee on Commerce, Science, and**  
31 **Transportation of the Senate, an implementation plan, based on the findings of the national**  
32 **strategy and other assessments, as appropriate, for sustainable chemistry.”.**

33 **(b) Sustainable Chemistry Basic Research.—Subject to the availability of appropriated**  
34 **funds, the Director of the National Science Foundation shall continue to carry out the**  
35 **Green Chemistry Basic Research program authorized under section 509 of the National**  
36 **Science Foundation Authorization Act of 2010 (42 U.S.C. 1862p–3).**

## 37 **SEC. 25. STATE PROGRAMS.**

38 Section 28 of the Toxic Substances Control Act (15 U.S.C. 2627) is amended—

39 (1) in subsection (b)(1)—

40 (A) in subparagraphs (A) through (D), by striking the comma at the end of each

subparagraph and inserting a semicolon; and

(B) in subparagraph (E), by striking “, and” and inserting “; and”; and

(2) by striking subsections (c) and (d).

## SEC. ~~25~~ 26. AUTHORIZATION OF APPROPRIATIONS.

Section 29 of the Toxic Substances Control Act (15 U.S.C. 2628) is repealed.

## SEC. ~~26~~ 27. ANNUAL REPORT.

Section 30 of the Toxic Substances Control Act (15 U.S.C. 2629) is amended by striking paragraph (2) and inserting the following:

“(2)(A) the number of notices received during each year under section 5; and

“(B) the number of the notices described in subparagraph (A) for chemical substances subject to a rule, testing consent agreement, or order under section 4;”.

## SEC. ~~27~~ 28. EFFECTIVE DATE.

Section 31 of the Toxic Substances Control Act (15 U.S.C. 2601 note; Public Law 94–469) is amended—

(1) by striking “Except as provided in section 4(f), this” and inserting the following:

“(a) In General.—This”; and

(2) by adding at the end the following:

“(b) Retroactive Applicability.—Nothing in this Act shall be interpreted to apply retroactively to any State, Federal, or maritime legal action commenced prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.”.

Message

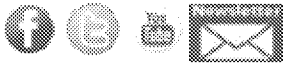
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**From:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Sent:** 9/29/2015 6:38:45 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]  
**Subject:** RE: Sen. Markey TA Request on Mercury

V helpful. Thank you.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



---

**From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]  
**Sent:** Tuesday, September 29, 2015 12:22 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** FW: Sen. Markey TA Request on Mercury

See below and attached technical assistance. Let me know if questions.

The attached table from the Report to Congress (pp. xiv and xv) responds to the question. All compounds in table are used outside of the mining sector; the red circles indicate use in mining and other sectors. The source sectors (column 2) and purposes and uses (column 4) are also listed.

EPA's 2009 Report to Congress on mercury compounds identified the industry sectors, uses, and quantities for 12 mercury compounds made/used/exported in sectors other than mining. The main sectors are chemical manufacturing, air pollution control, and waste treatment. None of the compounds was used only in the mining sector, although nearly all mercury (I) chloride is generated by mines or smelters.

Report: <http://www.epa.gov/mercury/pdfs/mercury-rpt-to-congress.pdf>

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, September 29, 2015 11:17 AM  
**To:** Vaught, Laura  
**Subject:** TA request

Laura

Section 12(c)(3) of TSCA required EPA to do a study on Hg compounds that could be used for the regeneration of elemental mercury. I'm pasting a list of some of the compounds below. The nature of the report that was required seems to suggest that EPA may already know generally who uses/makes/exports these compounds outside the mining sector – that is what I'm looking to figure out.

Thanks  
Michal

- “(i) Mercury (I) chloride or calomel.
- “(ii) Mercury (II) oxide.
- “(iii) Mercury (II) sulfate.
- “(iv) Mercury (II) nitrate.
- “(v) Cinnabar or mercury sulphide.
- “(vi) Any mercury compound that the Administrator, at the discretion of the Administrator, adds to the list by rule, on determining that exporting that mercury compound for the purpose of regenerating elemental mercury is technically feasible.

In existing TSCA

**c) PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.—**

(1) PROHIBITION.—Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) INAPPLICABILITY OF SUBSECTION (a).—Subsection (a) shall not apply to this subsection.

**(3) REPORT TO CONGRESS ON MERCURY COMPOUNDS.—**

(A) REPORT.—Not later than one year after the date of enactment of the Mercury Export Ban Act of 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products

or processes. Such report shall include an analysis of—

- (i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;
- (ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;
- (iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;
- (iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and
- (v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) PROCEDURE.—For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11.

(4) ESSENTIAL USE EXEMPTION.—(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

- (i) nonmercury alternatives for the specified use are not available in the country where the facility is located;
- (ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;
- (iii) the country where the elemental mercury will be used certifies its support for the exemption;
- (iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;
- (v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and  
(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

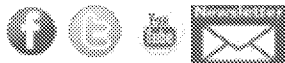
(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15, and shall be subject to penalties under section 16, injunctive relief under section 17, and citizen suits under section 20.

(5) **CONSISTENCY WITH TRADE OBLIGATIONS.**—Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) **EXPORT OF COAL.**—Nothing in this subsection shall be construed to prohibit the export of coal.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



Message

---

**From:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Sent:** 9/29/2015 4:25:21 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]  
**Subject:** Re: Sen. Markey TA Request on Mercury

Thank you

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Vaught, Laura  
**Sent:** Tuesday, September 29, 2015 12:21 PM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** FW: Sen. Markey TA Request on Mercury

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Report: <http://www.epa.gov/mercury/pdfs/mercury-rpt-to-congress.pdf>

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, September 29, 2015 11:17 AM  
**To:** Vaught, Laura  
**Subject:** TA request

Laura

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Thanks  
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In existing TSCA

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(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) PROCEDURE.—For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11.

(4) ESSENTIAL USE EXEMPTION.—(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

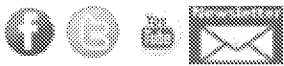
(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

- (D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15, and shall be subject to penalties under section 16, injunctive relief under section 17, and citizen suits under section 20.
- (5) **CONSISTENCY WITH TRADE OBLIGATIONS.**—Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.
- (6) **EXPORT OF COAL.**—Nothing in this subsection shall be construed to prohibit the export of coal.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



Message

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**From:** McDonough, Alexander (Reid) [Alexander\_McDonough@reid.senate.gov]  
**Sent:** 9/10/2015 6:19:52 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Bauserman, Trent [Trenton\_D\_Bauserman@ceq.eop.gov]; Crowell, Brad [Brad.Crowell@hq.doe.gov]; Shimek, Jaime [Jaime.Shimek@Hq.Doe.Gov]  
**Subject:** RE: mercury export ban act amendment  
**Attachments:** MCC15400\_XML.doc

Sorry, here's the clean word version, please use this.

---

**From:** McDonough, Alexander (Reid)  
**Sent:** Thursday, September 10, 2015 2:19 PM  
**To:** Vaught, Laura; 'Bauserman, Trent'; Crowell, Brad; 'Shimek, Jaime'  
**Subject:** mercury export ban act amendment

Hi – I know you've seen multiple versions of amendments to amend the Mercury Export Ban Act in order to move forward on developing a permanent storage facility, which is delayed. The attached provides encouragement to budget for the facility while helping generators with interim storage since they weren't expecting this delay.

Jaime is already helping with technical assistance, but Trent suggested I also loop in EPA since this would also involve modifying the generators' RCRA obligations. Please let me know if there are any major concerns or technical suggestions you would like to provide.

This is envisioned as an amendment to the TSCA reform bill when it comes to the floor, or earlier.

Thank you!

Alex

Purpose: To allow alternative methods of responsibly managing elemental mercury.

S. 697

To amend the Toxic Substances Control Act to reauthorize and modernize that Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS INTENDED TO BE PROPOSED BY MR. HELLER

Viz:

On page 281, strike lines 13 through 16 and insert the following:

(A) in paragraph (1)—

(i) by striking “Effective” and inserting the following:

“(A) IN GENERAL.—Effective”;

(ii) by inserting “for purposes of the sale, distribution in commerce, recovery, or beneficial use or reuse of the mercury” after “United States”; and

(iii) by adding at the end the following:

“(B) EXPORT OF ELEMENTARY MERCURY FOR TREATMENT, STORAGE, OR DISPOSAL.—Nothing in this subsection prohibits the export of elemental mercury from the United States for purposes of—

“(i) disposal; or

“(ii) treatment or storage in lieu of or prior to disposal.”;

(B) by striking paragraph (3); and

(C) by redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.

On page 350, after line 6, add the following:

## SEC. 28. ELEMENTAL MERCURY.

(a) Temporary Generator Accumulation.—Section 5 of the Mercury Export Ban Act of 2008 (42 U.S.C. 6939f) is amended—

1 (1) in subsection (a)(2), by striking “2013” and inserting “2018”;

2 (2) in subsection (g)(2)—

3 (A) in the undesignated material at the end, by striking “This subparagraph” and  
4 inserting the following:

5 “(C) Subparagraph (B)”;

6 (B) in subparagraph (C) (as added by paragraph (1)), by inserting “of that  
7 subparagraph” before the period at the end; and

8 (C) by adding at the end the following:

9 “(D) A generator may accumulate elemental mercury destined for a facility  
10 designated by the Secretary under subsection (a) for more than 90 days without a  
11 permit issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C.  
12 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that  
13 Act (42 U.S.C. 6924(j)), if—

14 “(i) the Secretary is unable to accept the mercury at a facility designated by the  
15 Secretary under subsection (a) for reasons beyond the control of the generator;

16 “(ii) the generator certifies in writing to the Secretary that the generator will  
17 ship the mercury to a designated facility when the Secretary is able to accept the  
18 mercury;

19 “(iii) the generator certifies in writing to the Secretary that the generator will  
20 not sell, or otherwise place into commerce, the mercury; and

21 “(iv) the generator complies with the requirements described in paragraphs (1)  
22 through (4) of section 262.34(a) of title 40, Code of Federal Regulations (as in  
23 effect on the date of enactment of this subparagraph).

24 “(E) Subparagraph (D) shall not apply to mercury with respect to which the  
25 generator fails to comply with a certification provided under clause (ii) or (iii) of that  
26 subparagraph.”; and

27 (3) in subsection (b)—

28 (A) in paragraph (1)—

29 (i) by redesignating subparagraphs (A), (B), and (C), as clauses (i), (ii), and  
30 (iii), respectively and indenting appropriately;

31 (ii) in the first sentence, by striking “After consultation” and inserting the  
32 following:

33 “(A) ASSESSMENT AND COLLECTION.—After consultation”;

34 (iii) in the second sentence, by striking “The amount of such fees” and inserting  
35 the following:

36 “(B) AMOUNT.—The amount of the fees described in subparagraph (A)”;

37 (iv) in subparagraph (B) (as so designated)—

38 (I) in clause (i) (as so redesignated), by striking “publically available not

1 later than October 1, 2012” and inserting “publicly available not later than  
2 October 1, 2017”;

3 (II) in clause (ii) (as so redesignated), by striking “and”;

4 (III) in clause (iii) (as so redesignated), by striking the period at the end  
5 and inserting “, subject to clause (iv); and”; and

6 (IV) by adding at the end the following:

7 “(iv) for generators temporarily accumulating elemental mercury in a facility  
8 subject to subsection (g)(2)(D)(iv) if the facility designated in subsection (a) is not  
9 operational by January 1, 2018, shall be adjusted to subtract the cost of the  
10 temporary accumulation during the period in which the facility designated under  
11 subsection (a) is not operational.”; and

12 (v) by adding at the end the following:

13 “(C) CONVEYANCE OF TITLE AND PERMITTING.—If the facility designated in  
14 subsection (a) is not operational by January 1, 2020, the Secretary—

15 “(i) shall immediately accept the conveyance of title to any elemental mercury  
16 destined for a facility designated by the Secretary under subsection (a) that has  
17 accumulated before January 1, 2020, and deliver the accumulated mercury to the  
18 facility designated under subsection (a) on the date on which the facility becomes  
19 operational;

20 “(ii) shall pay any applicable Federal permitting costs, including the costs for  
21 permits issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C.  
22 6925(c)); and

23 “(iii) shall not be eligible for an exemption under subsection (g)(2)(D).”; and

24 (B) in paragraph (2), in the first sentence, by striking “paragraph (1)(C)” and  
25 inserting “paragraph (1)(B)(iii).”

26 (b) Interim Status.—Section 5(d)(1) of the Mercury Export Ban Act of 2008 (42 U.S.C.  
27 6939f(d)(1)) is amended—

28 (1) in the fourth sentence, by striking “in existence on or before January 1, 2013,”; and

29 (2) in the last sentence, by striking “January 1, 2015” and inserting “January 1, 2020”.

Message

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**From:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Sent:** 10/21/2015 9:44:54 PM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]  
**Subject:** Markey TA on citizen petitions  
**Attachments:** CITIZENPETITIONCHANGESDISCUSSIONdocx.docx

Laura

Could you please have folks take a look at this and let me know if people see any issues?

Thanks  
Michal

## CITIZEN PETITIONS – DISCUSSION OF IMPACT OF CHANGES

**Generally:** The changes to the citizen petition language for sections 5(d) and 6(d) were suggested by EPA as conforming changes intended to ensure that the standard in this provision matched up with new language included in sections 5(d) and 6(d) of S697. This document is not intended to argue that this change (or indeed, any change to any part of underlying TSCA) does not carry with it a potential risk that a court may interpret a provision differently than it has in the past. Rather, it is intended to demonstrate that the claimed adverse impacts of this change may be limited, if they exist at all, based on a review of how and when the petitions are likely to be used.

### Section 5(d) (related to assessment and regulation of new chemicals)

“(bb) in the case of a petition to issue an order under section 5(d), ~~there is a reasonable basis to conclude that the chemical substance is not likely to meet the safety standard;~~”

- 1) Section 5(d) is the part of the new chemicals section that requires EPA to determine whether a new chemical is likely to meet the safety standard within 90 days and, also during that timeframe, to decide whether to issue orders to restrict or learn more about the chemical before it decides whether to write a Significant New Use Rule (SNUR). The part of the citizen petition section that is altered is not what EPA does with regard to a SNUR but rather the order:

“(i) IN GENERAL.—If the Administrator makes a determination under subparagraph (A) or (C) of paragraph (3) with respect to a notice submitted under subsection (b)—

“(I) the Administrator, before the end of the applicable period for review under paragraph (1) and by consent agreement or order, as appropriate, shall prohibit or otherwise restrict the manufacture, processing, use, distribution in commerce, or disposal (as applicable) of the chemical substance, or of the chemical substance for a significant new use, without compliance with the restrictions specified in the consent agreement or order that the Administrator determines are sufficient to ensure that the chemical substance or significant new use is likely to meet the safety standard; and”

- 2) A citizen petition under this section would thus need to occur either:
  - a. before the 90 day period expires, which seems to be unlikely timing for such a petition to be filed.
  - b. after the 90 day period expires, and EPA does not issue an order because it concludes that the chemical *is* likely to meet the safety standard, in which case the petitioner needs to prove in court that the chemical is *not* likely to meet the safety standard. EPA would be likely to deny such a petition no matter the standard of review, since the petitioner would be arguing that EPA was wrong, and the petitioner would then go to court for de novo review. The question before the court would be the sufficiency of EPA’s actions, and the “preponderance of evidence” test in underlying TSCA that would be used to evaluate this has not been changed by S697.

or

- c. after EPA issues an insufficient order even after finding that the chemical is not likely to meet the safety standard. In this instance, a petitioner would have no problem making the necessary new showing in court, since EPA will have just made the identical finding itself. The question before the court would be the sufficiency of EPA's actions, and the "preponderance of evidence" test in underlying TSCA that would be used to evaluate this has not been changed by S697.

#### **Section 6(d) (related to assessment and regulation of existing chemicals)**

"(cc) in the case of a petition to initiate a proceeding for the issuance of a rule under section 6(d), ~~there is a reasonable basis to conclude that the chemical substance will~~ **does** not meet the safety standard; or"

In this case we have 5 different scenarios for when a citizen petition might be filed:

- a. EPA hasn't listed a chemical substance a citizen thinks is dangerous as a high priority substance and the petitioner wants EPA move directly to rule-making. Section 6(d) is targeted at chemicals that have already been deemed high priority AND found by EPA through a safety assessment/determination process not to meet the safety standard. I do not believe a court would short-circuit the bill's intended procedure for regulating chemicals in this manner, and would deem the petition premature.
- b. EPA has yet to decide whether a high priority substance meets the safety standard (ie hasn't finished its safety determination). Same conclusion as for 1) if EPA's deadline has not passed – the petition is likely premature. If EPA *has* missed its deadline for finishing a safety determination, a deadline suit would be a better avenue than a citizen petition under 6(d) to ensure that EPA finishes its work.
- c. EPA has found that a high priority substance meets the safety standard, but a citizen believes that decision was made in error. In this case, the petitioner would have a better chance litigating the EPA decision under the 'substantial evidence' standard provided for in S697 rather than filing a citizen petition. This is because under a de novo court proceeding under a citizen petition, the citizen would need to prove that the chemical did NOT meet the safety standard, whereas filing a suit under the judicial review provision of TSCA would require EPA to prove under the substantial evidence standard that its finding that a chemical DID meet the safety standard was the right one.
- d. EPA has found that a high priority substance does not meet the safety standard, but has yet to finalize a rule. If EPA has missed its rule deadline, then it is better for the citizen to file a deadline suit rather than a citizen petition. If EPA has not yet missed its rule deadline, then this citizen petition would be filed in the 2-4 year time period in between the safety determination issuance and the rule finalization. But during this period, EPA will have already found that the chemical substance does not meet the safety standard – so the new language would be an easy showing to make for a petitioner who wants a faster/different rule than the one they think EPA will write. The question before the court will then be the sufficiency of EPA's planned actions, and the "preponderance of

evidence” test in underlying TSCA that would be used to evaluate this has not been changed by S697.

- e. EPA has found that a high priority substance does not meet the safety standard, but has written an inadequate rule that the citizen wishes to change. In this case, the petitioner would have a better chance litigating the EPA rule under the ‘substantial evidence’ standard provided for in S697 rather than filing a citizen petition. This is because under a de novo court proceeding under a citizen petition, the citizen would need to prove that the rule was inadequate, whereas filing a suit under the judicial review provision of TSCA would require EPA to prove under the substantial evidence standard that its rule *was* adequate. However, if the citizen wished to file a citizen petition anyway, the citizen would easily meet the showing that the chemical did not meet the safety standard because EPA would have already made the identical finding.

Message

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**From:** Olsen, Elizabeth (EPW) [Elizabeth\_Olsen@epw.senate.gov]  
**Sent:** 10/13/2015 3:18:34 PM  
**To:** Mccarthy, Gina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=51ee957b10cb49a0b2ff98174ae44a46-Mccarthy, Regina]  
**CC:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fd3eb96e8b78-Distefano,]  
**Subject:** SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: February 4, 2015 Responses OVERDUE  
**Attachments:** ALL QFRs McCarthy 02.04.15 Environment and Public Works WOTUS Hearing.pdf; mccarthy formal letter qfr.pdf

Dear Administrator McCarthy,

The Senate Environment and Public Works Committee is once again messaging you to check on the status of your responses to the follow up questions from the Senate EPW Committee WOTUS Hearing on **February 4, 2015**. These were due on **March 10, 2015**. Please e-mail a copy of your responses to [Elizabeth\\_Olsen@epw.senate.gov](mailto:Elizabeth_Olsen@epw.senate.gov) **AS SOON AS POSSIBLE**.

If you have any questions about the requests or you believe that you have already submitted them, please feel free to contact me.

Thank you,  
Elizabeth "Lizzy" Olsen, J.D.  
Majority Director of Operations  
Senate Committee on Environment and Public Works  
C: (202) 407-3841  
O: (202)224-6176

Message

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**From:** Kessler, Rick [Rick.Kessler@mail.house.gov]  
**Sent:** 10/10/2015 2:05:51 AM  
**To:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Schmidt, Lorie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f471d4b316f74b0591322b5c63f1d01c-Schmidt, Lorie]  
**Subject:** Majority Auto Bill  
**Attachments:** SLW\_217\_xml.pdf

Laura and Lori:

Going to need to get a read from EPA on the Environmental provisions in the attached draft.  
Happy weekend!

-Rick

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

**[DISCUSSION DRAFT]**114TH CONGRESS  
1ST SESSION**H. R.** \_\_\_\_\_

To provide greater transparency, accountability, and safety authority to the  
National Highway Traffic Safety Administration, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

M\_\_\_\_. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

**A BILL**

To provide greater transparency, accountability, and safety  
authority to the National Highway Traffic Safety Admin-  
istration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4 This Act may be cited as the **[“**\_\_\_\_\_ **Act**  
5 **of 2015”]**.

**6 SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is the following:

Sec. 1. Short title.

Sec. 2. Table of contents.

## TITLE I—ADMINISTRATIVE

- Sec. 101. Required reporting of NHTSA agenda.
- Sec. 102. Corporate responsibility for NHTSA reports.
- Sec. 103. NHTSA reporting on implementation of inspector general recommendations.
- Sec. 104. Report on operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies.
- Sec. 105. Improvement of data collection on child occupants in vehicle crashes.
- Sec. 106. Electronic odometer disclosures.

## TITLE II—MOTOR VEHICLE SAFETY RECALLS

- Sec. 201. Improvements in availability of motor vehicle safety recall information.
- Sec. 202. NHTSA recall notification and coordination.
- Sec. 203. Recall notification at State vehicle registration.
- Sec. 204. Recall obligations under bankruptcy.
- Sec. 205. Application of remedies for defects and noncompliance.
- Sec. 206. National vehicle identification number database.

TITLE III—PRIVACY, HACKING PROHIBITION, AND CYBER  
SECURITY

- Sec. 301. Vehicle data privacy.
- Sec. 302. Motor vehicle data hacking.
- Sec. 303. Automotive Cybersecurity Advisory Council.

TITLE IV—SAFETY STANDARDS, GUIDELINES, EVALUATIONS,  
AND NEW REQUIREMENTS

- Sec. 401. NHTSA report on seat belts for school buses.
- Sec. 402. Rulemaking on rear seat crashworthiness.
- Sec. 403. Retention of safety records by manufacturers.
- Sec. 404. Nonapplication of prohibitions relating to noncomplying motor vehicles to vehicles used for testing or evaluation.
- Sec. 405. Treatment of low-volume manufacturers.
- Sec. 406. No liability on the basis of NHTSA motor vehicle safety guidelines.

## TITLE V—ADVANCED AUTOMOTIVE TECHNOLOGIES

- Sec. 501. Metrics for advanced automotive technologies.
- Sec. 502. Credits for advanced automotive technology.
- Sec. 503. Fuel economy credits for advanced automotive technologies.

**1        TITLE I—ADMINISTRATIVE****2        SEC. 101. REQUIRED REPORTING OF NHTSA AGENDA.**

**3** Not later than December 1 of the year beginning  
**4** after the date of enactment of this Act, and each year  
**5** thereafter, the Administrator of the National Highway  
**6** Traffic Safety Administration shall publish on the public

1 website of the Administration, and file with the Committee  
2 on Energy and Commerce of the House of Representatives  
3 and the Committee on Commerce, Science, and Transpor-  
4 tation of the Senate an annual plan for the following cal-  
5 endar year detailing the Administration’s projected activi-  
6 ties, including—

7 (1) the Administrator’s policy priorities;

8 (2) any rulemakings projected to be com-  
9 menced;

10 (3) any plans to develop guidelines;

11 (4) any plans to restructure the Administration  
12 or to establish or alter working groups;

13 (5) any planned projects or initiatives of the  
14 Administration, including the working groups and  
15 advisory committees of the Administration; and

16 (6) any projected dates or timetables associated  
17 with any of the items described in paragraphs (1)  
18 through (5).

19 **SEC. 102. CORPORATE RESPONSIBILITY FOR NHTSA RE-**  
20 **PORTS.**

21 Section 30166(o) of title 49, United States Code, is  
22 amended—

23 (1) in paragraph (1), by striking “may” and in-  
24 serting “shall”; and

25 (2) by adding at the end the following:

1           “(3) DEADLINE.—Not later than 1 year after  
2           the date of enactment of this paragraph, the Sec-  
3           retary shall issue final rules under paragraph (1).”.

4   **SEC. 103. NHTSA REPORTING ON IMPLEMENTATION OF IN-**  
5           **SPECTOR GENERAL RECOMMENDATIONS.**

6           (a) INSPECTOR GENERAL REPORT.—Not later than  
7   90 days after the date of enactment of this Act, and peri-  
8   odically thereafter until the National Highway Traffic  
9   Safety Administration has implemented all of the rec-  
10 ommendations of the Inspector General of the Department  
11 of Transportation, issued June 18, 2015, and contained  
12 in report number ST–2015–063, such Inspector General  
13 shall submit a report to the Committee on Energy and  
14 Commerce of the House of Representatives and the Com-  
15 mittee on Commerce, Science, and Transportation of the  
16 Senate on the progress that the Administration has made  
17 to implement the recommendations in such report.

18          (b) ADMINISTRATOR REPORT.—Not later than 90  
19 days after the date of enactment of this Act, and every  
20 90 days thereafter until the National Highway Traffic  
21 Safety Administration has implemented all of the rec-  
22 ommendations in the report described in subsection (a),  
23 the Administrator of the National Highway Traffic Safety  
24 Administration shall submit a report to the Committee on  
25 Energy and Commerce of the House of Representatives

1 and the Committee on Commerce, Science, and Transpor-  
2 tation of the Senate on the progress that the Administra-  
3 tion has made to implement the recommendations in the  
4 report described in subsection (a), including a plan and  
5 timetable for implementing any remaining recommenda-  
6 tions.

7 **SEC. 104. REPORT ON OPERATIONS OF THE COUNCIL FOR**  
8 **VEHICLE ELECTRONICS, VEHICLE SOFT-**  
9 **WARE, AND EMERGING TECHNOLOGIES.**

10 Not later than 1 year after the date of enactment  
11 of this Act, the Secretary of Transportation shall submit  
12 to the Committee on Commerce, Science, and Transpor-  
13 tation of the Senate and the Committee on Energy and  
14 Commerce of the House of Representatives a report re-  
15 garding the operations of the Council for Vehicle Elec-  
16 tronics, Vehicle Software, and Emerging Technologies es-  
17 tablished under section 31401 of the Moving Ahead for  
18 Progress in the 21st Century Act (49 U.S.C. 105 note).  
19 The report shall include information about the accomplish-  
20 ments of the Council, the role of the Council in integrating  
21 and aggregating electronic and emerging technologies ex-  
22 pertise across the National Highway Traffic Safety Ad-  
23 ministration, the role of the Council in coordinating with  
24 other Federal agencies, and the priorities of the Council  
25 over the next 5 years.

1   **SEC. 105. IMPROVEMENT OF DATA COLLECTION ON CHILD**  
2                   **OCCUPANTS IN VEHICLE CRASHES.**

3           (a) **IN GENERAL.**—Not later than 1 year after the  
4 date of enactment of this Act, the Secretary of Transpor-  
5 tation shall revise the crash investigation data collection  
6 system of the National Highway Traffic Safety Adminis-  
7 tration to include the collection of the following data in  
8 connection with vehicle crashes whenever a child restraint  
9 system was in use in a vehicle involved in a crash:

10           (1) The type or types of child restraint systems  
11 in use during the crash in any vehicle involved in the  
12 crash, including whether a five-point harness or belt-  
13 positioning booster.

14           (2) If a five-point harness child restraint system  
15 was in use during the crash, whether the child re-  
16 straint system was forward-facing or rear-facing in  
17 the vehicle concerned.

18           (b) **CONSULTATION.**—In implementing subsection  
19 (a), the Secretary shall work with law enforcement offi-  
20 cials, safety advocates, the medical community, and re-  
21 search organizations to improve the recordation of data  
22 described in subsection (a) in police and other applicable  
23 incident reports.

24           (c) **REPORT.**—Not later than 3 years after the date  
25 of enactment of this Act, the Secretary shall submit to  
26 the Committee on Commerce, Science, and Transportation

1 of the Senate and the Committee on Energy and Com-  
2 merce of the House of Representatives a report on child  
3 occupant crash data collection in the crash investigation  
4 data collection system of the National Highway Traffic  
5 Safety Administration pursuant to the revision required  
6 by subsection (a).

7 **SEC. 106. ELECTRONIC ODOMETER DISCLOSURES.**

8 Section 32705(g) of title 49, United States Code, is  
9 amended—

10 (1) by striking “Not” and inserting “(1) Not”;

11 and

12 (2) by adding at the end the following:

13 “(2) Notwithstanding paragraph (1) and subject to  
14 paragraph (3), a State, without approval from the Sec-  
15 retary under subsection (d), may allow for written dislo-  
16 sures or notices and related matters to be provided elec-  
17 tronically if the disclosures or notices and related mat-  
18 ters—

19 “(A) are provided in compliance with—

20 “(i) the requirements of title I of the Elec-  
21 tronic Signatures in Global and National Com-  
22 merce Act (15 U.S.C. 7001 et seq.); or

23 “(ii) the requirements of a State law under  
24 section 102(a) of such Act (15 U.S.C. 7002(a));

25 and

1 “(B) otherwise meet the requirements under  
2 this section, including appropriate authentication  
3 and security measures.

4 “(3) Paragraph (2) ceases to be effective on the date  
5 the regulations under paragraph (1) become effective.”.

## 6 **TITLE II—MOTOR VEHICLE** 7 **SAFETY RECALLS**

### 8 **SEC. 201. IMPROVEMENTS IN AVAILABILITY OF MOTOR VE-** 9 **HICLE SAFETY RECALL INFORMATION.**

10 (a) IMPROVEMENTS TO FEDERAL WEBSITE.—Begin-  
11 ning not later than 2 years after the date of enactment  
12 of this Act, the Secretary of Transportation shall imple-  
13 ment and keep current information technology, web design  
14 trends, and best practices that will help ensure that motor  
15 vehicle safety recall information available to the public on  
16 the Federal website established for making available such  
17 information is readily accessible and easy to use, includ-  
18 ing—

19 (1) by improving the organization, availability,  
20 readability, and functionality of the website;

21 (2) by accommodating high-traffic volume; and

22 (3) by establishing best practices for scheduling  
23 routine website maintenance.

24 (b) GOVERNMENT ACCOUNTABILITY OFFICE PUBLIC  
25 AWARENESS REPORT.—

1           (1) IN GENERAL.—The Comptroller General of  
2           the United States shall study the use by consumers,  
3           dealers, and manufacturers of motor vehicle safety  
4           recall information made available to the public, in-  
5           cluding the usability and content of the Federal  
6           website and manufacturers’ websites established for  
7           making available such information and the National  
8           Highway Traffic Safety Administration’s efforts to  
9           publicize and educate consumers about such infor-  
10          mation.

11          (2) REPORT.—Not later than 2 years after the  
12          date of enactment of this Act, the Comptroller Gen-  
13          eral shall issue a report on the findings of the study  
14          required by paragraph (1), including recommenda-  
15          tions for any actions the Secretary of Transportation  
16          can take to improve public awareness and use of the  
17          websites described in such paragraph.

18          (c) PROMOTION OF PUBLIC AWARENESS.—Section  
19          31301(c) of the Moving Ahead for Progress in the 21st  
20          Century Act (49 U.S.C. 30166 note) is amended to read  
21          as follows:

22          “(c) PROMOTION OF PUBLIC AWARENESS.—The Sec-  
23          retary shall improve public awareness of motor vehicle  
24          safety recall information made publicly available by peri-  
25          odically updating the method of conveying that informa-

tion to consumers, dealers, and manufacturers, such as through public service announcements.”.

(d) CONSUMER GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall make available to the public on the Internet detailed guidance for consumers submitting motor vehicle safety complaints, including—

(1) a detailed explanation of what information a consumer should include in a complaint; and

(2) a detailed explanation of the possible actions the National Highway Traffic Safety Administration can take to address a complaint and respond to the consumer, including information on—

(A) the consumer records, such as photographs and police reports, that could assist with an investigation; and

(B) the length of time a consumer should retain the records described in subparagraph

(A).

**SEC. 202. NHTSA RECALL NOTIFICATION AND COORDINATION.**

(a) NOTIFICATION BY EMAIL AND OTHER ELECTRONIC MEANS.—

(1) TO OWNERS, PURCHASERS, AND LESSEES.—

Not later than 270 days after the date of enactment

1 of this Act, the Secretary of Transportation shall  
2 prescribe a final rule revising the regulations under  
3 paragraphs (a) and (b) of section 577.7 of title 49,  
4 Code of Federal Regulations, relating to notification  
5 of motor vehicle defects and noncompliance to—

6 (A) require notification by email (if the  
7 email address of the person required to be noti-  
8 fied is available to and has been authorized to  
9 be used by the manufacturer) in addition to no-  
10 tification by first class mail (or, if the postal  
11 address of such person is not reasonably ascer-  
12 tainable by the manufacturer, instead of notifi-  
13 cation by first class mail); and

14 (B) encourage notification by other elec-  
15 tronic means, including through social media  
16 and targeted online campaigns.

17 (2) TO SECRETARY OF TRANSPORTATION.—Sec-  
18 tion 30118(c) of title 49, United States Code, is  
19 amended by inserting “or email” after “certified  
20 mail”.

21 (b) COORDINATION WITH MANUFACTURER RE-  
22 QUIRED.—Section 30118(a) of title 49, United States  
23 Code, is amended—

1           (1) by striking “The Secretary of Transpor-  
2           tation” and inserting “(1) The Secretary of Trans-  
3           portation”; and

4           (2) by adding at the end the following:

5           “(2) Prior to publishing notice of any defect or non-  
6           compliance, the Secretary shall draft such notice in coordi-  
7           nation with the affected manufacturer or manufacturers.  
8           Such notice may not be published unless all vehicle identi-  
9           fication numbers for the affected vehicles have been made  
10          available to the Secretary in such a manner that, begin-  
11          ning immediately after the notice is published, consumers  
12          can determine, by a vehicle identification number search  
13          functionality made available on the Internet, whether par-  
14          ticular vehicles are involved in the recall. The vehicle iden-  
15          tification numbers shall be made available to the Secretary  
16          pursuant to the following process:

17               “(A) Upon the decision by the Administrator of  
18               the National Highway Traffic Safety Administration  
19               to publish a notice of defect or noncompliance, the  
20               Administrator shall first notify each affected manu-  
21               facturer, including any suppliers responsible for the  
22               defect or noncompliance.

23               “(B) Any supplier of parts that the Adminis-  
24               trator has determined to be defective or noncompli-  
25               ant under this section shall identify all parts that

1 are subject to the recall and provide the Adminis-  
2 trator and each affected manufacturer all part num-  
3 bers for each affected part within 3 business days  
4 after receiving notice under subparagraph (A).

5 “(C) Upon receipt of notice from the Adminis-  
6 trator or a supplier as required under this para-  
7 graph, each affected manufacturer shall identify the  
8 vehicle identification number for each affected vehi-  
9 cle and provide, within 5 business days after receiv-  
10 ing such notice, such vehicle identification numbers  
11 to the Administrator in a searchable format deter-  
12 mined by the Administrator.

13 “(3) Any public notice of any defect or noncompliance  
14 shall also include, to the extent reasonable under the cir-  
15 cumstances, whether remedies are available with respect  
16 to each defective or noncompliant part and each manufac-  
17 turer involved in the recall.”.

18 (c) ESTIMATED TIME OF AVAILABILITY OF EACH  
19 REMEDY.—Section 30119(a) of title 49, United States  
20 Code, is amended—

21 (1) by redesignating paragraphs (6) and (7) as  
22 paragraphs (7) and (8), respectively; and

23 (2) by inserting after paragraph (5) the fol-  
24 lowing:

1 “(6) to the extent reasonable under the cir-  
2 cumstances, for each remedy for the defect or non-  
3 compliance, an estimate, stated as a time range not  
4 longer than 2 months, of when consumers should ex-  
5 pect to have access to such remedy;”.

6 (d) OPTION FOR PURCHASERS TO PROVIDE EMAIL  
7 TO MANUFACTURERS.—Section 30117 of title 49, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

10 “(d) OPTION FOR PURCHASERS TO PROVIDE EMAIL  
11 TO MANUFACTURERS.—At the time when a motor vehicle  
12 is purchased or leased from a manufacturer or from a  
13 dealer that has a franchise, operating, or other agreement  
14 with the manufacturer, the manufacturer shall give the  
15 purchaser or lessee of the motor vehicle the option to pro-  
16 vide an email address or other information to enable noti-  
17 fication by electronic means in the event of a safety recall  
18 or noncompliance as provided under section 577.5 of title  
19 49, Code of Federal Regulations. Email addresses and  
20 other contact information collected under this subsection  
21 may not be used to contact the purchaser or lessee for  
22 any reason, including marketing, other than to provide a  
23 safety recall or noncompliance notice.”.

24 (e) RECALL COMPLETION RATES REPORT.—

1           (1) ANALYSIS REQUIRED.—Not later than 1  
2       year after the date of enactment of this Act, and bi-  
3       ennially thereafter for 4 years, the Secretary of  
4       Transportation shall—

5           (A) conduct an analysis of vehicle safety  
6       recall completion rates to assess potential ac-  
7       tions by the National Highway Traffic Safety  
8       Administration to improve vehicle safety recall  
9       completion rates; and

10          (B) submit to the Committee on Energy  
11       and Commerce of the House of Representatives  
12       and the Committee on Commerce, Science, and  
13       Transportation of the Senate a report on the  
14       results of the analysis.

15       (2) CONTENTS.—Each report shall include—

16           (A) the annual recall completion rate by  
17       manufacturer, model year, component (such as  
18       brakes, fuel systems, and air bags), and vehicle  
19       type (passenger car, sport utility vehicle, pas-  
20       senger van, and pick-up truck) for each of the  
21       5 years before the year the report is submitted;  
22       and

23           (B) the methods by which the Secretary  
24       has conducted analyses of these recall comple-

1           tion rates to determine trends and identify risk  
2           factors associated with lower recall rates.

3       (f) INSPECTOR GENERAL AUDIT OF MOTOR VEHICLE  
4   RECALLS.—

5           (1) AUDIT REQUIRED.—The Inspector General  
6       of the Department of Transportation shall conduct  
7       an audit of the National Highway Traffic Safety Ad-  
8       ministration’s management of motor vehicle safety  
9       recalls.

10          (2) CONTENTS.—The audit shall include a de-  
11       termination of whether the National Highway Traf-  
12       fic Safety Administration—

13               (A) appropriately monitors recalls to en-  
14       sure the appropriateness of scope and adequacy  
15       of recall completion rates and remedies;

16               (B) ensures that manufacturers provide  
17       safe remedies, at no cost to consumers;

18               (C) is capable of coordinating recall rem-  
19       edies and processes; and

20               (D) can improve its policy on consumer no-  
21       tice to combat the effects of the dilution of the  
22       effectiveness of recall notices due to the number  
23       or frequency of such notices.

1 **SEC. 203. RECALL NOTIFICATION AT STATE VEHICLE REG-**  
2 **ISTRATION.**

3 (a) RECALL PROGRAM PARTICIPATION REQUIRED.—  
4 Section 30303 of title 49, United States Code, is amended  
5 by adding at the end the following:

6 “(d) RECALL NOTICE REQUIRED.—A participating  
7 State shall—

8 “(1) agree to notify, at the time of vehicle reg-  
9 istration, each owner or lessee of a motor vehicle  
10 presented for registration in the State of any open  
11 recall on that vehicle;

12 “(2) provide the open motor vehicle recall infor-  
13 mation at no cost to each owner or lessee of a motor  
14 vehicle presented for registration in the State; and

15 “(3) provide such other information as the Sec-  
16 retary may require.

17 “(e) DEFINITIONS.—In this section:

18 “(1) MOTOR VEHICLE.—The term ‘motor vehi-  
19 cle’ has the meaning given the term under section  
20 30102(a) of this title.

21 “(2) OPEN MOTOR VEHICLE RECALL.—The  
22 term ‘open motor vehicle recall’ means a recall for  
23 which a notification by a manufacturer has been  
24 provided under section 30119 of this title, and that  
25 has not been remedied under section 30120 of this  
26 title.

1           “(3) REGISTRATION.—The term ‘registration’  
2           means the process for registering a motor vehicle in  
3           the State or renewing the registration for such  
4           motor vehicle.

5           “(4) STATE.—The term ‘State’ has the mean-  
6           ing given the term under section 101(a) of title 23.”.

7           (b) CONFORMING AMENDMENT.—Section 30303(a)  
8           of title 49, United States Code, is amended by inserting  
9           “and subsection (d) of this section” before the period.

10   **SEC. 204. RECALL OBLIGATIONS UNDER BANKRUPTCY.**

11           Section 30120A of title 49, United States Code, is  
12           amended by striking “chapter 11 of title 11,” and insert-  
13           ing “chapter 7 or chapter 11 of title 11”.

14   **SEC. 205. APPLICATION OF REMEDIES FOR DEFECTS AND**  
15           **NONCOMPLIANCE.**

16           Section 30120(g)(1) of title 49, United States Code,  
17           is amended by striking “10 calendar years” and inserting  
18           “15 calendar years”.

19   **SEC. 206. NATIONAL VEHICLE IDENTIFICATION NUMBER**  
20           **DATABASE.**

21           (a) IN GENERAL.—Chapter 301 of title 49, United  
22           States Code, is amended by inserting after section 30119  
23           the following:

1 **“§ 30119A. National vehicle identification number**  
2 **database**

3 “(a) ESTABLISHMENT.—Not later than 2 years after  
4 the date of enactment of this section, the Secretary of  
5 Transportation shall complete the establishment of a na-  
6 tional database of vehicle identification numbers and other  
7 information provided by States in accordance with sub-  
8 section (b).

9 “(b) STATES REQUIRED TO PROVIDE VIN AND VE-  
10 HICLE REGISTRATION INFORMATION.—

11 “(1) IN GENERAL.—Each State shall provide to  
12 the Secretary, in such manner as determined by the  
13 Secretary, the vehicle identification number of each  
14 motor vehicle registered in the State, and shall also  
15 provide, associated with such vehicle identification  
16 number—

17 “(A) the make, model, and year of manu-  
18 facture of the motor vehicle; and

19 “(B) the name and address of the person  
20 to whom the vehicle is registered, and an email  
21 address for such person if such person provides  
22 an email address.

23 “(2) TIMETABLE.—Each State shall begin to  
24 provide the Secretary with the information required  
25 under paragraph (1) on the date determined by the  
26 Secretary and shall provide such information for all

1 motor vehicles registered in the State not later than  
2 2 years after the date of enactment of this section.

3 “(3) UPDATING OF INFORMATION.—Each State  
4 shall verify that the information provided to the Sec-  
5 retary under to paragraph (1) is current each time  
6 a motor vehicle is subsequently registered in the  
7 State and shall provide any updated information to  
8 the Secretary not later than 7 days after each such  
9 subsequent registration when a change has occurred.

10 “(c) ACCESS TO INFORMATION BY MANUFACTURERS  
11 IN THE EVENT OF A RECALL.—In order to facilitate noti-  
12 fication of a defect or noncompliance under section 30119,  
13 an entity required to send notification under such section  
14 may submit to the Secretary a request containing the vehi-  
15 cle identification numbers of the vehicles containing a de-  
16 fect or noncompliance. Upon receiving such a request, the  
17 Secretary shall, within 2 business days, provide the entity  
18 the names and addresses of the persons to whom such ve-  
19 hicles are registered, and the email addresses for such per-  
20 sons who have provided an email address.

21 “(d) INFORMATION SECURITY AND LIMITATION ON  
22 USE.—The Secretary shall establish and maintain reason-  
23 able security measures for the information submitted to  
24 and released from the database established under this sec-  
25 tion. Neither the Secretary nor any entity obtaining infor-

1 mation from the Secretary shall disclose information con-  
2 tained in the database for any other purpose than pro-  
3 viding the required notification to consumers about a de-  
4 fect or noncompliance.

5 “(e) UPDATING EXISTING PUBLIC WEBSITE.—Not  
6 later than 2 years after the date of enactment of this sec-  
7 tion, the Secretary shall update the public website,  
8 www.safercar.gov, established pursuant to section 31301  
9 of the Moving Ahead for Progress in the 21st Century Act  
10 (49 U.S.C. 30166 note), to permit the searching and proc-  
11 essing for multiple vehicle identification numbers in a sin-  
12 gle search request.

13 “(f) CONTRACTED ENTITIES.—Nothing in this sec-  
14 tion shall be construed to prohibit the Secretary from en-  
15 gaging an outside contractor for the establishment and  
16 maintenance of the database required by this section if  
17 the Secretary determines that such contractor adheres to  
18 appropriate and reasonable security measures described in  
19 subsection (d).

20 “(g) FREEDOM OF INFORMATION ACT EXEMP-  
21 TION.—Information contained in the national vehicle iden-  
22 tification number database established under this section  
23 shall be exempt from public disclosure under section  
24 552(b)(3) of title 5.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 301 of title 49, United States Code, is amended by inserting after the item relating to section 30119 the following:

“30119A. National vehicle identification number database.”.

## **TITLE III—PRIVACY, HACKING PROHIBITION, AND CYBER SECURITY**

### **SEC. 301. VEHICLE DATA PRIVACY.**

(a) IN GENERAL.—Part C of subtitle VI of title 49, United States Code, is amended by inserting after chapter 323 the following new chapter:

## **“CHAPTER 324—VEHICLE DATA PRIVACY**

“Sec.

“32401. Definitions.

“32402. Vehicle data privacy.

### **“§ 32401. Definitions**

“In this chapter:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the National Highway Traffic Safety Administration.

“(2) COVERED INFORMATION.—The term ‘covered information’ means information that—

“(A) passenger motor vehicles collect, generate, record, or store in electronic form that may be retrieved by or on behalf of the manu-

1           facturer of the original motor vehicle equip-  
2           ment; or

3           “(B) is provided by the owner, lessee, or  
4           renter, if applicable, of a vehicle who subscribes  
5           to or registers for technologies and services pro-  
6           vided by, made available through, or offered on  
7           behalf of the manufacturer that involves the  
8           collection, use, or sharing of information that is  
9           collected, generated, recorded, or stored by a  
10          vehicle.

11          “(3) MANUFACTURER; MOTOR VEHICLE.—The  
12          terms ‘manufacturer’ and ‘motor vehicle’ have the  
13          meanings given those terms in section 30102.

14          “(4) SECRETARY.—The term ‘Secretary’ means  
15          the Secretary of Transportation.

16   **“§ 32402. Vehicle data privacy**

17          “(a) IN GENERAL.—Not later than 1 year after the  
18          date of enactment of this chapter, each manufacturer of  
19          motor vehicles sold or offered for sale in the United States  
20          shall develop and implement a privacy policy outlining the  
21          practices of such manufacturer regarding the collection,  
22          use, and sharing of covered information.

23          “(b) IDENTIFICATION OF PRIVACY POLICY REQUIRE-  
24          MENTS.—The privacy policy developed and implemented  
25          pursuant to subsection (a) shall identify whether the man-

1 manufacturer will provide an owner, lessee, or renter, if appli-  
2 cable, with any of the following:

3 “(1) Notices about the manufacturer’s collec-  
4 tion, use, and sharing of covered information.

5 “(2) The choices that are available to the  
6 owner, lessee, or renter regarding the collection, use,  
7 and sharing of covered information.

8 “(3) How and under what circumstances cov-  
9 ered information is collected.

10 “(4) A commitment to retain the covered infor-  
11 mation no longer than is determined necessary by  
12 the manufacturer for legitimate business purposes.

13 “(5) A commitment to implement reasonable  
14 measures to protect covered information against loss  
15 and unauthorized access or use.

16 “(6) A commitment to implement reasonable  
17 measures to maintain the accuracy of covered infor-  
18 mation and to provide the owner, lessee, or renter  
19 with reasonable means to review and correct infor-  
20 mation provided by the owner, lessee, or renter, if  
21 applicable.

22 “(7) A commitment to take reasonable steps to  
23 ensure that the manufacturer and other entities that  
24 receive the covered information by or on behalf of  
25 the manufacturer adhere to the privacy policy.

1 “(c) FILING AND PUBLICATION.—

2 “(1) PRIVACY POLICY.—Not later than 60 days  
3 after the implementation of a privacy policy by a  
4 manufacturer described in subsection (a), the manu-  
5 facturer shall file such policy with the Secretary.

6 “(2) WEBSITE PUBLICATION.—Not later than  
7 30 days after the submission of a privacy policy pur-  
8 suant to paragraph (1) or (3), the Secretary shall  
9 make such policy publicly accessible on a website op-  
10 erated by the Secretary.

11 “(3) UPDATE OF PRIVACY POLICY.—Not later  
12 than 30 days after updating the terms of a privacy  
13 policy submitted pursuant to paragraph (1), the  
14 manufacturer shall file the updated policy with the  
15 Secretary.

16 “(d) ENFORCEMENT.—

17 “(1) CIVIL PENALTY.—A manufacturer that  
18 does not meet the requirements of subsection (a) or  
19 (b) or that violates any of the terms of the privacy  
20 policy submitted pursuant to paragraph (1) or (3) of  
21 subsection (c) is liable to the United States Govern-  
22 ment for a civil penalty of not more than \$5,000 per  
23 day. The maximum penalty under this section for a  
24 series of violations by a single manufacturer is  
25 \$1,000,000.

1           “(2) LIABILITY PROTECTION.—A manufacturer  
2           that submits a privacy policy that meets all of the  
3           requirements described under subsection (b) is not  
4           subject to civil penalties described in paragraph (1).

5           “(e) SAFE HARBOR.—A manufacturer whose privacy  
6           policy identifies that such manufacturer will provide an  
7           owner, lessee, or renter, if applicable, with all of the items  
8           described under subsection (b) shall not be subject to the  
9           provisions of section 5 of the Federal Trade Commission  
10          Act (15 U.S.C. 45) with respect to any unfair or deceptive  
11          act or practice relating to privacy.”.

12          (b) VEHICLE EVENT DATA RECORDER STUDY.—

13                 (1) STUDY BY ADMINISTRATOR.—Not later  
14                 than 1 year after the date of enactment of this Act,  
15                 the Administrator of the National Highway Traffic  
16                 Safety Administration shall submit to the Secretary  
17                 of Transportation a study—

18                         (A) to determine the appropriate amount  
19                         of time for an event data recorder installed in  
20                         a passenger motor vehicle to capture and record  
21                         for retrieval vehicle-related data related to an  
22                         event to provide sufficient information to inves-  
23                         tigate the cause of a motor vehicle crash; and

1 (B) to identify data that may be appro-  
2 priate to transfer to a first responder for the  
3 treatment of a crash victim.

4 (2) REPORT BY SECRETARY.—Not later than  
5 10 days after the submission of the study required  
6 under paragraph (1), the Secretary shall submit to  
7 the Committee on Energy and Commerce of the  
8 House of Representatives and the Committee on  
9 Commerce, Science, and Transportation of the Sen-  
10 ate a report that contains the results of the study  
11 conducted by the Administrator pursuant to para-  
12 graph (1).

13 (c) CLERICAL AMENDMENT.—The analysis of subtitle  
14 VI of title 49, United States Code, is amended by inserting  
15 after the item relating to chapter 323 the following:

“324. Vehicle Data Privacy ..... 32401”.

16 **SEC. 302. MOTOR VEHICLE DATA HACKING.**

17 (a) AMENDMENT.—Section 30122 of title 49, United  
18 States Code, is amended by adding at the end the fol-  
19 lowing new subsection:

20 “(d) MOTOR VEHICLE DATA HACKING PROHIB-  
21 ITED.—

22 “(1) PROHIBITION.—It shall be unlawful for  
23 any person to access, without authorization, an elec-  
24 tronic control unit or critical system of a motor vehi-  
25 cle, or other system containing driving data for such

1 motor vehicle, either wirelessly or through a wired  
2 connection.

3 “(2) DEFINITIONS.—In this subsection:

4 “(A) CRITICAL SYSTEM.—The term ‘crit-  
5 ical system’ means software, firmware, or hard-  
6 ware located within or on a motor vehicle that,  
7 if accessed without authorization, can affect the  
8 movement of the vehicle.

9 “(B) DRIVING DATA.—The term ‘driving  
10 data’ means information that a motor vehicle  
11 collects, generates, records, or stores in elec-  
12 tronic form and information that is provided by  
13 the owner, lessee, or renter, if applicable, of a  
14 motor vehicle who subscribes to or registers for  
15 technologies and services provided by, made  
16 available through, or offered on behalf of the  
17 manufacturer that involves the collection, use,  
18 or sharing of information that is collected, gen-  
19 erated, recorded, or stored by the motor vehicle.

20 “(C) ELECTRONIC CONTROL UNIT.—The  
21 term ‘electronic control unit’ means an elec-  
22 trical system interface or software that can im-  
23 pact the movement, functioning, or operation of  
24 any component of a vehicle.”.

1 (b) CIVIL PENALTIES.—Section 30165(a) of title 49,  
2 United States Code, is amended by inserting at the end  
3 the following new paragraph:

4 “(5) MOTOR VEHICLE DATA HACKING.—Not-  
5 withstanding paragraph (1), a person who violates  
6 section 30122(d) is liable to the United States Gov-  
7 ernment for a civil penalty of not more than  
8 \$100,000 for each violation. A separate violation oc-  
9 curs for each motor vehicle or item of motor vehi-  
10 cle.”.

11 **SEC. 303. AUTOMOTIVE CYBERSECURITY ADVISORY COUN-**  
12 **CIL.**

13 (a) IN GENERAL.—Part A of subtitle VI of title 49,  
14 United States Code, is amended by adding at the end the  
15 following new chapter:

16 **“CHAPTER 307—CYBERSECURITY**

“Sec.

“30701. Automotive Cybersecurity Advisory Council.

17 **“§ 30701. Automotive Cybersecurity Advisory Council**

18 “(a) ESTABLISHMENT.—

19 “(1) IN GENERAL.—Not later than 1 year after  
20 the date of enactment of this chapter, the Adminis-  
21 trator of the National Highway Traffic Safety Ad-  
22 ministration shall establish an Automotive Cyberse-  
23 curity Advisory Council (in this chapter referred to  
24 as the ‘Council’) to develop cybersecurity best prac-

1        tices for manufacturers of automobiles offered for  
2        sale in the United States.

3            “(2) NOTICE OF INTENT.—Not later than 30  
4        days after the date of enactment of this chapter, the  
5        Administrator shall issue a notice of intent to open  
6        a proceeding establishing the Council. This notice  
7        shall be made public in the Federal Register and on  
8        a website maintained by the Administrator.

9            “(3) PROCEEDING AND APPOINTMENT OF MEM-  
10        BERS.—Not later than 60 days after the notice of  
11        intent is published pursuant to paragraph (2), the  
12        Administrator shall formally open a proceeding to  
13        establish the Council, and shall consult with the  
14        agencies listed under paragraph (4) and appoint  
15        members of the Council as set forth in such para-  
16        graph.

17            “(4) MEMBERSHIP.—

18            “(A) FEDERAL GOVERNMENT MEMBERS.—  
19        The Council shall be comprised of the Adminis-  
20        trator of the National Highway Traffic Safety  
21        Administration and at least one representative  
22        from each of the following agencies:

23            “(i) The Department of Defense.

24            “(ii) The National Institute of Stand-  
25        ards and Technology.

1                   “(iii) The National Highway Traffic  
2                   Safety Administration, other than the Ad-  
3                   ministrator.

4                   “(B) MEMBERS FROM MANUFACTURERS.—  
5                   Not later than 180 days after the date of enact-  
6                   ment of this chapter, the Administrator shall  
7                   require each manufacturer of automobiles that  
8                   manufactures more than 20,000 automobiles  
9                   sold in the previous calendar year in the United  
10                  States, in such manner as the Administrator  
11                  determines necessary, to appoint one represent-  
12                  ative of the manufacturer to serve as a member  
13                  on the Council.

14                  “(C) OTHER MEMBERS.—The Adminis-  
15                  trator shall invite one representative from a  
16                  company, organization, or association rep-  
17                  resenting authorized franchised car dealerships,  
18                  independent repair shops, consumer advocates,  
19                  parts suppliers (for tiers one, two, three and  
20                  four), standards-setting bodies, academics, and  
21                  security researchers to serve as a member on  
22                  the Council.

23                  “(D) LIMITATION.—Not fewer than 50  
24                  percent of the members on the Council shall be

1           representatives of manufacturers of auto-  
2           mobiles.

3           “(b) MEETINGS.—The Council shall meet not less  
4 than quarterly to develop best practices for cybersecurity  
5 for manufacturers of automobiles offered for sale in the  
6 United States. Not later than 10 business days before the  
7 day on which a meeting is held, the Administrator shall  
8 publish the meeting time and agenda of each meeting in  
9 the Federal Register and on a publicly accessible website.  
10 Any meeting held by the Council shall be closed to the  
11 public.

12           “(c) DEVELOPMENT OF BEST PRACTICES.—Not later  
13 than 1 year after Council is established pursuant to sub-  
14 section (a)(1), the Council shall develop cybersecurity best  
15 practices for manufacturers of automobiles offered for sale  
16 in the United States. Such best practices shall be approved  
17 by a simple majority of members of the Council and may  
18 include the following:

19           “(1) The quality of security controls imple-  
20 mented within software, firmware, and hardware  
21 used within automobiles.

22           “(2) The design of the automobile’s internal ar-  
23 chitecture with respect to connections between vehi-  
24 cle systems and critical safety systems.

1           “(3) The security specifications required by  
2           manufacturers of automobiles for suppliers of auto-  
3           mobile equipment, network service providers, and  
4           other relevant suppliers in the supply chain for vehi-  
5           cle development.

6           “(4) The security controls designed around  
7           ports, connection points, or other openings into the  
8           vehicle’s internal network and operating system.

9           “(5) The implementation of security controls to  
10          protect critical safety systems in the vehicle from ex-  
11          ploitation from any after-market or third-party de-  
12          vice and wireless connection brought into, plugged  
13          into, or established within the vehicle.

14          “(6) The remediation of cybersecurity  
15          vulnerabilities.

16          “(7) The use and quality of data forensics to  
17          investigate and identify cyber security vulnerabilities  
18          in vehicle systems and critical safety systems.

19          “(8) The coordination of cyber security vulner-  
20          ability disclosures among vehicle manufacturers and  
21          security researchers.

22          “(d) ANNUAL EVALUATION.—The Council shall re-  
23          view, and, if necessary, update cybersecurity best practices  
24          as the Council considers necessary on an annual basis. If  
25          no updates are necessary or approved following such an

1 evaluation, the Administrator shall report such determina-  
2 tion in the Federal Register. If the Council determines by  
3 a simple majority of all representatives that updates are  
4 necessary, the Council shall publish any updates in the  
5 Federal Register and on the website maintained by the  
6 Administrator that is publicly accessible not later than 90  
7 days after such determination.

8 “(e) SUBMISSION OF PLAN AND REVIEW.—

9 “(1) SUBMISSION OF PLAN.—

10 “(A) VEHICLE SECURITY AND INTEGRITY  
11 PLAN.—Not later than 90 days after the date  
12 on which the best practices approved by the  
13 Council pursuant to subsection (c) or (d) are  
14 published in the Federal Register, each manu-  
15 facturer of automobiles may file a vehicle secu-  
16 rity and integrity plan with the Administrator  
17 describing the policies and procedures the man-  
18 ufacturer uses to implement and maintain such  
19 best practices. Such plan, including any modi-  
20 fication of such plan, may not be disclosed to  
21 the public and is specifically exempted from dis-  
22 closure as described under section 552(b)(3) of  
23 title 5.

24 “(B) MODIFICATION OF PLAN.—Not later  
25 than 90 days after a manufacturer modifies the

1 plan described in subparagraph (A), the manu-  
2 facturer may file an updated plan with the Ad-  
3 ministrator.

4 “(2) REVIEW.—

5 “(A) REVIEW OF SUBMISSION.—Not later  
6 than 30 days after the submission of a plan  
7 pursuant to paragraph (1), the Administrator  
8 shall determine whether the plan complies with  
9 the best practices approved pursuant to sub-  
10 section (c) or (d) and, if necessary, order nec-  
11 essary modification to the plan to comply with  
12 such best practices. The Administrator shall de-  
13 termine that the plan complies with the best  
14 practices unless the Administrator demonstrates  
15 by clear and convincing evidence in the order  
16 issued under subparagraph (B) that the plan of  
17 the manufacturer is not consistent with the best  
18 practices.

19 “(B) ORDER FOR MODIFICATION.—If upon  
20 review, the Administrator determines that the  
21 plan of a manufacturer is not consistent with  
22 the best practices approved pursuant to sub-  
23 section (c) or (d), the Administrator shall issue  
24 an order to the manufacturer and the manufac-  
25 turer shall modify the plan in accordance with

1 the order. A manufacturer shall have 30 days  
2 to submit a modified plan in accordance with  
3 such order. The Administrator may not pre-  
4 scribe specific action that a manufacturer must  
5 take to comply with such best practices.

6 “(f) ENFORCEMENT.—

7 “(1) VIOLATION OF PLAN.—A manufacturer  
8 that violates the vehicle security and integrity plan  
9 described in subsection (e)(1) of such manufacturer  
10 is subject to the civil penalties described in section  
11 30165(a)(1).

12 “(2) LIABILITY PROTECTION.—A manufacturer  
13 is not subject to civil penalties described in section  
14 30165(a)(1) with regard to a violation of the vehicle  
15 security and integrity plan of such manufacturer if  
16 the manufacturer—

17 “(A) submits such a vehicle security and  
18 integrity plan described in subsection (e)(1)  
19 that is approved by the Administrator; and

20 “(B) implements and maintains the best  
21 practices identified in the plan.

22 “(3) NO LIABILITY ON THE BASIS OF CYBERSE-  
23 CURITY BEST PRACTICES ISSUED BY THE COUNCIL  
24 .—The best practices issued by the Council under  
25 this section may not provide a basis for or evidence

1 of liability in an action against a manufacturer of  
2 automobiles whose cyber security practices are al-  
3 leged to be inconsistent with the best practices  
4 issued by the Council if—

5 “(A) the manufacturer has not filed a vehi-  
6 cle security and integrity plan under subsection  
7 (e)(1); or

8 “(B) the plan of the manufacturer does  
9 not include the cyber security practice at issue.

10 “(g) SAFE HARBOR.—A manufacturer that submits  
11 a vehicle security and integrity plan in accordance with  
12 subsection (e)(1) shall not be subject to the provisions of  
13 section 5 of the Federal Trade Commission Act (15 U.S.C.  
14 45) with respect to any unfair or deceptive act or practice  
15 relating to the best practices the manufacturer implements  
16 and maintains under such plan.

17 “(h) DEFINITIONS.—The terms ‘automobile’ and  
18 ‘manufacturer’ have the meanings given those terms in  
19 section 32901(a).”.

20 (b) CLERICAL AMENDMENT.—The analysis for sub-  
21 title VI of title 49, United States Code, is amended by  
22 inserting after the item relating to chapter 305 the fol-  
23 lowing:

“307. Cybersecurity ..... 30701”.

24 (c) TECHNICAL AND CONFORMING CIVIL PENALTY  
25 AMENDMENT.—Section 30165(a)(1) of title 49, United

1 States Code, is amended by inserting “30701,” after  
2 “30147,”.

3 **TITLE IV—SAFETY STANDARDS,**  
4 **GUIDELINES, EVALUATIONS,**  
5 **AND NEW REQUIREMENTS**

6 **SEC. 401. NHTSA REPORT ON SEAT BELTS FOR SCHOOL**  
7 **BUSES.**

8 (a) STUDY.—The Administrator of the National  
9 Highway Traffic Safety Administration shall identify and  
10 publish a report evaluating seat belts, advanced auto-  
11 motive technologies, and connected vehicle technologies for  
12 school buses (with a gross vehicle weight rating of more  
13 than 10,000 pounds that meet all required motor vehicle  
14 safety standards) to—

15 (1) determine the advanced automotive tech-  
16 nologies and connected vehicle technologies for  
17 motor vehicles that have the largest potential to im-  
18 pact school bus safety;

19 (2) evaluate the potential costs and potential  
20 safety benefits of installing various seat belt systems  
21 in school buses; and

22 (3) identify the system that is least expensive to  
23 install and would not impede the capacity of such  
24 school buses that are less than 10 years old.

1 (b) REPORT.—Not later than 1 year after the date  
2 of enactment of this Act, the Administrator shall submit  
3 to Congress a report on the findings of the study required  
4 by subsection (a), including any recommendations to im-  
5 prove public awareness of safety measures relating to  
6 school buses.

7 **SEC. 402. RULEMAKING ON REAR SEAT CRASH-**  
8 **WORTHINESS.**

9 (a) SAFETY RESEARCH INITIATIVE.—Not later than  
10 2 years after the date of enactment of this Act, the Sec-  
11 retary of Transportation shall complete research into the  
12 development of safety standards or performance require-  
13 ments for the crashworthiness and survivability for pas-  
14 sengers in the rear seats of motor vehicles.

15 (b) SPECIFICATIONS.—In carrying out subsection (a),  
16 the Secretary shall consider side- and rear-impact collision  
17 testing, additional airbags, head restraints, seatbelt fit,  
18 seatbelt airbags, belt anchor location, and any other fac-  
19 tors the Secretary considers appropriate.

20 (c) RULEMAKING OR REPORT.—

21 (1) RULEMAKING.—Not later than 1 year after  
22 the completion of each research and testing initiative  
23 required under subsection (a), the Secretary shall  
24 initiate a rulemaking proceeding to issue a Federal  
25 motor vehicle safety standard if the Secretary deter-

1        mines that such a standard meets the requirements  
2        and considerations set forth in subsections (a) and  
3        (b) of section 30111 of title 49, United States Code.

4            (2) REPORT.—If the Secretary determines that  
5        the standard described in paragraph (1) does not  
6        meet the requirements and considerations set forth  
7        in such subsections, the Secretary shall submit a re-  
8        port describing the reasons for not prescribing such  
9        a standard to the Committee on Energy and Com-  
10       merce of the House of Representatives and the Com-  
11       mittee on Commerce, Science, and Transportation of  
12       the Senate.

13   **SEC. 403. RETENTION OF SAFETY RECORDS BY MANUFAC-**  
14            **TURERS.**

15        (a) RULE.—Not later than 18 months after the date  
16       of enactment of this Act, the Secretary of Transportation  
17       shall issue a final rule pursuant to section 30117 of title  
18       49, United States Code, requiring each manufacturer of  
19       motor vehicles or motor vehicle equipment to retain all  
20       motor vehicle safety records, including documents, reports,  
21       correspondence, or other materials that contain informa-  
22       tion concerning malfunctions that may be related to motor  
23       vehicle safety (including any failure or malfunction beyond  
24       normal deterioration in use, or any failure of performance,  
25       or any flaw or unintended deviation from design specifica-

1 tions, that could in any reasonably foreseeable manner be  
2 a causative factor in, or aggravate, an accident or an in-  
3 jury to a person), for a period of not less than 10 calendar  
4 years from the date on which they were generated or ac-  
5 quired by the manufacturer. Such requirement shall also  
6 apply to all underlying records on which information re-  
7 ported to the Secretary under part 579 of title 49, Code  
8 of Federal Regulations, is based.

9 (b) APPLICATION.—The rule required by subsection  
10 (a) shall apply with respect to any record described in such  
11 subsection that is in the possession of a manufacturer on  
12 the effective date of such rule.

13 **SEC. 404. NONAPPLICATION OF PROHIBITIONS RELATING**  
14 **TO NONCOMPLYING MOTOR VEHICLES TO VE-**  
15 **HICLES USED FOR TESTING OR EVALUATION.**

16 Section 30112(b) of title 49, United States Code, is  
17 amended—

18 (1) in paragraph (8), by striking “; or” and in-  
19 serting a semicolon;

20 (2) in paragraph (9), by striking the period at  
21 the end and inserting “; or”; and

22 (3) by adding at the end the following new  
23 paragraph:

24 “(10) the introduction of a motor vehicle in  
25 interstate commerce solely for purposes of testing or

1 evaluation by a manufacturer that prior to the date  
2 of enactment of this paragraph—

3 “(A) has manufactured and distributed  
4 motor vehicles into the United States that are  
5 certified to comply with all applicable Federal  
6 motor vehicle safety standards;

7 “(B) has submitted to the Secretary ap-  
8 propriate manufacturer identification informa-  
9 tion under part 566 of title 49, Code of Federal  
10 Regulations;

11 “(C) if applicable, has identified an agent  
12 for service of process in accordance with part  
13 551 of such title; and

14 “(D) agrees not to sell or offer for sale the  
15 motor vehicle at the conclusion of the testing or  
16 evaluation.”.

17 **SEC. 405. TREATMENT OF LOW-VOLUME MANUFACTURERS.**

18 (a) EXEMPTION FROM VEHICLE SAFETY STANDARDS  
19 FOR LOW-VOLUME MANUFACTURERS.—Section 30114 of  
20 title 49, United States Code, is amended—

21 (1) by striking “The” and inserting “(a) VEHI-  
22 CLES USED FOR PARTICULAR PURPOSES.—The”;  
23 and

24 (2) by adding at the end the following new sub-  
25 section:

1       “(b) EXEMPTION FOR LOW-VOLUME MANUFACTUR-  
2   ERS.—

3               “(1) IN GENERAL.—The Secretary shall—

4                       “(A) exempt from section 30112(a) of this  
5                       title not more than 500 replica motor vehicles  
6                       per year that are manufactured or imported by  
7                       a low-volume manufacturer; and

8                       “(B) except as provided in paragraph (4)  
9                       of this subsection, limit any such exemption to  
10                      the Federal Motor Vehicle Safety Standards ap-  
11                      plicable to motor vehicles and not motor vehicle  
12                      equipment.

13               “(2) REGISTRATION REQUIREMENT.—To qual-  
14                       ify for an exemption under paragraph (1), a low-vol-  
15                       ume manufacturer shall register with the Secretary  
16                       at such time, in such manner, and under such terms  
17                       that the Secretary determines appropriate. The Sec-  
18                       retary shall establish terms that ensure that no per-  
19                       son may register as a low-volume manufacturer if  
20                       the person is registered as an importer under section  
21                       30141 of this title.

22               “(3) PERMANENT LABEL REQUIREMENT.—

23                       “(A) IN GENERAL.—The Secretary shall  
24                       require a low-volume manufacturer to affix a  
25                       permanent label to a motor vehicle exempted

1 under paragraph (1) that identifies the speci-  
2 fied standards and regulations for which such  
3 vehicle is exempt from section 30112(a) and  
4 designates the model year such vehicle rep-  
5 licates.

6 “(B) WRITTEN NOTICE.—The Secretary  
7 may require a low-volume manufacturer of a  
8 motor vehicle exempted under paragraph (1) to  
9 deliver written notice of the exemption to—

10 “(i) the dealer; and

11 “(ii) the first purchaser of the motor  
12 vehicle, if the first purchaser is not an in-  
13 dividual that purchases the motor vehicle  
14 for resale.

15 “(C) REPORTING REQUIREMENT.—A low-  
16 volume manufacturer shall annually submit a  
17 report to the Secretary including the number  
18 and description of the motor vehicles exempted  
19 under paragraph (1) and a list of the exemp-  
20 tions described on the label affixed under sub-  
21 paragraph (A).

22 “(4) EFFECT ON OTHER PROVISIONS.—Any  
23 motor vehicle exempted under this subsection shall  
24 also be exempted from sections 32304, 32502, and  
25 32902 of this title and from section 3 of the Auto-

1 mobile Information Disclosure Act (15 U.S.C.  
2 1232).

3 “(5) LIMITATION AND PUBLIC NOTICE.—The  
4 Secretary shall have 60 days to review and approve  
5 a registration submitted under paragraph (2). Any  
6 registration not approved or denied within 60 days  
7 after submission shall be deemed approved. The Sec-  
8 retary shall have the authority to revoke an existing  
9 registration based on a failure to comply with re-  
10 quirements set forth in this subsection. The reg-  
11 istrant shall be provided a reasonable opportunity to  
12 correct all deficiencies, if such are correctable based  
13 on the sole discretion of the Secretary. An exemption  
14 granted by the Secretary to a low-volume manufac-  
15 turer under this subsection may not be transferred  
16 to any other person, and shall expire at the end of  
17 the calendar year for which it was granted with re-  
18 spect to any volume authorized by the exemption  
19 that was not applied by the low-volume manufac-  
20 turer to vehicles built during that calendar year. The  
21 Secretary shall maintain an up-to-date list of reg-  
22 istrants on an annual basis and publish such list in  
23 the Federal Register or on a website operated by the  
24 Secretary.

1           “(6) LIMITATION OF LIABILITY FOR ORIGINAL  
2           MANUFACTURERS, LICENSORS OR OWNERS OF PROD-  
3           UCT CONFIGURATION, TRADE DRESS, OR DESIGN  
4           PATENTS.—The original manufacturer, its successor  
5           or assignee, or current owner, who grants a license  
6           or otherwise transfers rights to a low-volume manu-  
7           facturer shall incur no liability to any person or enti-  
8           ty under Federal or State statute, regulation, local  
9           ordinance, or under any Federal or State common  
10          law for such license or assignment to a low-volume  
11          manufacturer.

12          “(7) DEFINITIONS.—In this subsection:

13               “(A) LOW-VOLUME MANUFACTURER.—The  
14               term ‘low-volume manufacturer’ means a motor  
15               vehicle manufacturer, other than a person who  
16               is registered as an importer under section  
17               30141 of this title, whose annual worldwide  
18               production is not more than 5,000 motor vehi-  
19               cles.

20               “(B) REPLICA MOTOR VEHICLE.—The  
21               term ‘replica motor vehicle’ means a motor ve-  
22               hicle produced by a low-volume manufacturer  
23               and that—

24                       “(i) is intended to resemble the body  
25                       of another motor vehicle that was manu-

1 factured not less than 25 years before the  
2 manufacture of the replica motor vehicle;  
3 and

4 “(ii) is manufactured under a license  
5 for the product configuration, trade dress,  
6 trademark, or patent, for the motor vehicle  
7 that is intended to be replicated from the  
8 original manufacturer, its successors or as-  
9 signees, or current owner of such product  
10 configuration, trade dress, trademark, or  
11 patent rights.”.

12 (b) VEHICLE EMISSION COMPLIANCE STANDARDS  
13 FOR LOW-VOLUME MOTOR VEHICLE MANUFACTURERS.—  
14 Part A of title II of the Clean Air Act (42 U.S.C. 7521  
15 et seq.) is amended—

16 (1) in section 206(a) by adding at the end the  
17 following new paragraph:

18 “(5)(A) A motor vehicle engine (including all engine  
19 emission controls) from a motor vehicle that has been  
20 granted a certificate of conformity by the Administrator  
21 for the model year in which the motor vehicle is assembled,  
22 or a motor vehicle engine that has been granted an Execu-  
23 tive order subject to regulations promulgated by the Cali-  
24 fornia Air Resources Board for the model year in which

1 the motor vehicle is assembled, may be installed in an ex-  
2 empted specially produced motor vehicle, if—

3 “(i) the manufacturer of the engine supplies  
4 written instructions explaining how to install the en-  
5 gine and maintain functionality of the engine’s emis-  
6 sion control system and the on-board diagnostic sys-  
7 tem (commonly known as ‘OBD II’), except with re-  
8 spect to evaporative emissions diagnostics;

9 “(ii) the manufacturer of the exempted specially  
10 produced motor vehicle installs the engine in accord-  
11 ance with such instructions; and

12 “(iii) the installation instructions include emis-  
13 sion control warranty information from the engine  
14 manufacturer in compliance with section 207, in-  
15 cluding where warranty repairs can be made, emis-  
16 sion control labels to be affixed to the vehicle, and  
17 the certificate of conformity number for the applica-  
18 ble vehicle in which the engine was originally in-  
19 tended or the applicable Executive order number for  
20 the engine.

21 “(B) A motor vehicle containing an engine compliant  
22 with the requirements of subparagraph (A) shall be treat-  
23 ed as meeting the requirements of section 202 applicable  
24 to new vehicles manufactured or imported in the model

1 year in which the exempted specially produced motor vehi-  
2 cle is assembled.

3 “(C) Engine installations that are not performed in  
4 accordance with installation instructions provided by the  
5 manufacturer and alterations to the engine not in accord-  
6 ance with the installation instructions shall—

7 “(i) be treated as prohibited acts by the in-  
8 staller under section 203; and

9 “(ii) subject to civil penalties under the first  
10 and third sentences of section 205(a), civil actions  
11 under section 205(b), and administrative assessment  
12 of penalties under section 205(c).

13 “(D) The manufacturer of an exempted specially pro-  
14 duced motor vehicle that has an engine compliant with the  
15 requirements of subparagraph (A) shall provide to the  
16 purchaser of such vehicle all information received by the  
17 manufacturer from the engine manufacturer, including in-  
18 formation regarding emissions warranties from the engine  
19 manufacturer and all emissions-related recalls by the en-  
20 gine manufacturer.

21 “(E) To qualify to install an engine under this para-  
22 graph, a manufacturer of exempted specially produced  
23 motor vehicles shall register with the Administrator at  
24 such time and in such manner as the Administrator deter-

1 mines appropriate. The manufacturer shall submit an an-  
2 nual report to the Administrator that includes—

3 “(i) a description of the exempted specially pro-  
4 duced motor vehicles and engines installed in such  
5 vehicles; and

6 “(ii) the certificate of conformity number issued  
7 to the motor vehicle in which the engine was origi-  
8 nally intended or the applicable Executive order  
9 number for the engine.

10 “(F) Exempted specially produced motor vehicles  
11 compliant with this paragraph shall be exempted from—

12 “(i) motor vehicle certification testing under  
13 this section; and

14 “(ii) vehicle emission control inspection and  
15 maintenance programs required under section 110.

16 “(G) A person engaged in the manufacturing or as-  
17 sembling of exempted specially produced motor vehicles  
18 shall not be treated as a manufacturer for purposes of this  
19 Act by virtue of such manufacturing or assembling, so  
20 long as such person complies with subparagraphs (A)  
21 through (E).”; and

22 (2) in section 216 by adding at the end the fol-  
23 lowing new paragraph:

24 “(12) EXEMPTED SPECIALLY PRODUCED  
25 MOTOR VEHICLE.—The term ‘exempted specially

1 produced motor vehicle’ means a replica motor vehi-  
2 cle that is exempt from specified standards pursuant  
3 to section 30114(b) of title 49, United States  
4 Code.”.

5 (c) IMPLEMENTATION.—Not later than 12 months  
6 after the date of enactment of this Act, the Secretary of  
7 Transportation and the Administrator of the Environ-  
8 mental Protection Agency shall issue such regulations as  
9 may be necessary to implement the amendments made by  
10 subsections (a) and (b), respectively.

11 **SEC. 406. NO LIABILITY ON THE BASIS OF NHTSA MOTOR**  
12 **VEHICLE SAFETY GUIDELINES.**

13 Section 30111 of title 49, United States Code, is  
14 amended by adding at the end the following new sub-  
15 section:

16 “(f) NO LIABILITY ON THE BASIS OF MOTOR VEHI-  
17 CLE SAFETY GUIDELINES ISSUED BY THE SECRETARY.—

18 (1) No guidelines issued by the Secretary with respect to  
19 motor vehicle safety shall provide a basis for or evidence  
20 of liability in any action against a defendant whose prac-  
21 tices are alleged to be inconsistent with such guidelines.  
22 A person who is subject to any such guidelines may use  
23 an alternative approach to that set forth in such guidelines  
24 that complies with any requirement in a provision of this

1 subtitle, a motor vehicle safety standard issued under this  
2 subtitle, or another relevant statute or regulation.

3 “(2) No such guidelines shall confer any rights on  
4 any person nor shall operate to bind the Secretary or any  
5 person who is subject to such guidelines to the approach  
6 recommended in such guidelines. In any enforcement ac-  
7 tion with respect to motor vehicle safety, the Secretary  
8 must prove a violation of a provision of this subtitle, a  
9 motor vehicle safety standard issued under this subtitle,  
10 or another relevant statute or regulation. The Secretary  
11 may not build a case against or negotiate a consent order  
12 with any person based in whole or in part on practices  
13 of the person that are alleged to be inconsistent with any  
14 such guidelines.

15 “(3) A defendant may use compliance with any such  
16 guidelines as evidence of compliance with the provision of  
17 this subtitle, motor vehicle safety standard issued under  
18 this subtitle, or other statute or regulation under which  
19 such guidelines were developed.”.

1                   **TITLE V—ADVANCED**  
2                   **AUTOMOTIVE TECHNOLOGIES**  
3   **SEC. 501. METRICS FOR ADVANCED AUTOMOTIVE TECH-**  
4                   **NOLOGIES.**

5           (a) IN GENERAL.—Part C of subtitle VI of title 49,  
6 United States Code, is amended by inserting after chapter  
7 327 the following new chapter:

8   **“CHAPTER 328—ADVANCED AUTOMOTIVE**  
9                   **TECHNOLOGIES**

“Sec.

“32801. Definitions.

“32802. Metrics for advanced automotive technologies.

10   **“§ 32801. Definitions**

11           “In this chapter:

12                   “(1) ADVANCED AUTOMOTIVE TECHNOLOGY;  
13                   CONNECTED VEHICLE TECHNOLOGY.—The terms  
14                   ‘advanced automotive technology’ and ‘connected ve-  
15                   hicle technology’ have the meanings given those  
16                   terms in section 32920.

17                   “(2) MANUFACTURER; MOTOR VEHICLE.—The  
18                   terms ‘manufacturer’ and ‘motor vehicle’ have the  
19                   meanings given those terms in section 30102.

20   **“§ 32802. Metrics for advanced automotive tech-**  
21                   **nologies**

22           “(a) ADVANCED AUTOMOTIVE TECHNOLOGY ADVI-  
23           SORY COMMITTEE.—

1           “(1) ESTABLISHMENT.—Not later than 1 year  
2           after the date of enactment of this chapter, the Sec-  
3           retary of Transportation shall establish an Advanced  
4           Automotive Technology Advisory Committee (in this  
5           chapter referred to as the ‘Committee’) to develop  
6           safety performance metrics for advanced automotive  
7           technologies and connected vehicle technologies origi-  
8           nally installed in motor vehicles.

9           “(2) NOTICE OF INTENT.—Not later than 30  
10          days after the date of enactment of this chapter, the  
11          Secretary shall issue a notice of intent to open a  
12          proceeding establishing the Committee. This notice  
13          shall be published in the Federal Register and on a  
14          website maintained by the Secretary.

15          “(3) PROCEEDING AND APPOINTMENT OF MEM-  
16          BERS.—Not later than 60 days after the notice of  
17          intent is published pursuant to paragraph (2), the  
18          Secretary shall formally open a proceeding to estab-  
19          lish the Committee and appoint members of the  
20          Committee as set forth in paragraph (4).

21          “(4) MEMBERSHIP.—The Committee shall be  
22          comprised of the National Highway Traffic Safety  
23          Administration and representatives from manufac-  
24          turers of motor vehicles for sale in the United  
25          States, standards setting bodies including the Inter-

1 national Organization of Standards and SAE Inter-  
2 national, and any others as determined by the Sec-  
3 retary.

4 “(b) DEVELOPMENT OF SAFETY PERFORMANCE  
5 METRICS.—

6 “(1) IN GENERAL.—The Committee shall de-  
7 velop safety performance metrics for any advanced  
8 automotive technology or connected vehicle tech-  
9 nology that is original equipment in at least 15 per-  
10 cent of the motor vehicle fleet for sale in the United  
11 States by any manufacturer of motor vehicles. The  
12 Secretary shall publish any safety performance  
13 metrics developed by the Committee in the Federal  
14 Register and otherwise provide public notice of such  
15 metrics in such manner as determined by the Sec-  
16 retary.

17 “(2) TEST PROCEDURES REQUIRED.—Each  
18 safety performance metric developed pursuant to  
19 paragraph (1) for an advanced automotive tech-  
20 nology or connected vehicle technology shall include  
21 a corresponding test procedure developed by the  
22 Committee to be utilized to determine if the tech-  
23 nology meets the established safety performance  
24 metric. Each test procedure shall be made publicly  
25 available on a website maintained by the Secretary.

1           “(3) SAFETY RATING.—The Secretary shall as-  
2           sign a safety rating under the New Car Assessment  
3           Program for each advanced automotive technology  
4           or connected vehicle technology that has an estab-  
5           lished safety performance metric and corresponding  
6           test procedure.

7           “(c) LABEL REQUIREMENTS.—

8           “(1) IN GENERAL.—The safety rating for any  
9           advanced automotive technology or connected vehicle  
10          technology that has been installed as original equip-  
11          ment in a new motor vehicle shall be added to the  
12          label according to label requirements set forth in the  
13          Automobile Information Disclosure Act (15 U.S.C.  
14          1231 et seq.) if the Secretary determines that at  
15          least 35 percent of new motor vehicles marketed and  
16          sold in the United States are equipped with the tech-  
17          nology as original equipment.

18          “(2) MOTOR VEHICLES THAT DO NOT CONTAIN  
19          AN ADVANCED AUTOMOTIVE TECHNOLOGY.—If a  
20          new motor vehicle does not have an advanced auto-  
21          motive technology or connected vehicle technology  
22          following the determination made by the Secretary  
23          in paragraph (1), the manufacturer shall identify on  
24          the label described in such paragraph that the vehi-

1        cle is not equipped with the technology in such man-  
2        ner as determined by the Secretary.

3            “(3) ADVANCED AUTOMOTIVE TECHNOLOGIES  
4        THAT DO NOT HAVE PUBLISHED OR RELEASED PER-  
5        FORMANCE METRICS, TEST PROCEDURES, OR SAFE-  
6        TY RATINGS.—If an advanced automotive technology  
7        or connected vehicle technology that is installed as  
8        part of the motor vehicle’s original equipment does  
9        not have a formally published or released perform-  
10        ance metric, test procedure, or safety rating, the  
11        Secretary shall require that the technology be listed  
12        on the label described in paragraph (1) as a special  
13        feature of the motor vehicle until a performance  
14        metric, test procedure, and safety rating is developed  
15        for the technology and at least 35 percent of all new  
16        motor vehicles marketed or sold in the United States  
17        are equipped with the technology as original equip-  
18        ment.

19            “(4) REMOVAL FROM LABEL.—If the Secretary  
20        determines that more than 85 percent of new motor  
21        vehicles contain a particular advanced automotive  
22        technology or connected vehicle technology installed  
23        as original equipment, the Secretary may require  
24        that the technology safety rating be eliminated from  
25        the label described in paragraph (1).”.

1 (b) CLERICAL AMENDMENT.—The analysis of sub-  
2 title VI of title 49, United States Code, is amended by  
3 inserting after the item relating to chapter 327 the fol-  
4 lowing:

“328. Advanced Automotive Technologies ..... 32801”.

5 **SEC. 502. CREDITS FOR ADVANCED AUTOMOTIVE TECH-**  
6 **NOLOGY.**

7 (a) IN GENERAL.—

8 (1) CREDITS.—Section 202(a) of the Clean Air  
9 Act (42 U.S.C. 7521(a)) is amended by adding at  
10 the end the following:

11 “(7) CREDITS FOR ADVANCED AUTOMOTIVE  
12 TECHNOLOGY.—

13 “(A) APPLICABILITY.—This paragraph ap-  
14 plies with respect to any light-duty vehicle,  
15 light-duty truck, or medium-duty passenger ve-  
16 hicle that is—

17 “(i) manufactured after model year  
18 2018; and

19 “(ii) equipped with (as original equip-  
20 ment)—

21 “(I) at least three advanced auto-  
22 motive technologies; or

23 “(II) one connected vehicle tech-  
24 nology.

1           “(B) CREDITS.—Any greenhouse gas emis-  
2           sions standards promulgated under paragraph  
3           (1) for a light-duty vehicle, light-duty truck, or  
4           medium-duty passenger vehicle shall provide a  
5           credit of—

6                   “(i) 3 or more grams per mile (as de-  
7                   termined by the Administrator) of green-  
8                   house gas emissions for any vehicle de-  
9                   scribed in subparagraph (A) with at least  
10                  three advanced automotive technologies in-  
11                  stalled as original equipment; and

12                   “(ii) 6 or more grams per mile (as de-  
13                   termined by the Administrator) of green-  
14                   house gas emissions for any vehicle de-  
15                   scribed in subparagraph (A) with a con-  
16                   nected vehicle technology installed as origi-  
17                   nal equipment.

18           “(C) LIMITATION.—The Administrator  
19           may not take the installation or noninstallation  
20           of any advanced automotive technology or con-  
21           nected vehicle technology into account for any  
22           purpose other than providing credits pursuant  
23           to subparagraph (B).

24           “(D) PERIODIC REVIEW OF NUMBER OF  
25           GRAMS PER MILE.—Not later than the end of

1           calendar year 2026, and biennially thereafter,  
2           the Administrator shall—

3                   “(i) review the number of grams per  
4                   mile of greenhouse gas emissions being  
5                   given as credits under clauses (i) and (ii)  
6                   of subparagraph (B) to determine whether  
7                   (and if so to what extent) the Adminis-  
8                   trator will exercise the authority vested by  
9                   such clauses to change such number; and  
10                   “(ii) submit a report to the Congress  
11                   on the results of such review and deter-  
12                   mination.

13           “(E) DEFINITIONS.—In this paragraph:

14                   “(i) The term ‘advanced automotive  
15                   technology’ has the meaning given to such  
16                   term in section 32920(a)(1) of title 49,  
17                   United States Code.

18                   “(ii) The term ‘connected vehicle tech-  
19                   nology’ has the meaning given to such  
20                   term in section 32920(a)(2) of title 49,  
21                   United States Code.

22                   “(iii) The term ‘medium-duty pas-  
23                   senger vehicle’ means a medium-duty pas-  
24                   senger vehicle as such term is used in the  
25                   final rules entitled ‘Greenhouse Gas Emis-

1                   sions Standards and Fuel Efficiency  
2                   Standards for Medium- and Heavy-Duty  
3                   Engines and Vehicles’ published in the  
4                   Federal Register by the Environmental  
5                   Protection Agency and National Highway  
6                   Traffic Safety Administration on Sep-  
7                   tember 15, 2011 (76 Fed. Reg. 57106)  
8                   (including any successor regulations).”.

9                   (2) CONFORMING AMENDMENTS.—Section  
10                  202(a)(6) of the Clean Air Act (42 U.S.C.  
11                  7521(a)(6)) is amended—

12                   (A) by striking “Within 1 year” and in-  
13                   serting the following:

14                   “(A) Within 1 year”; and

15                   (B) by striking “The standards shall re-  
16                   quire” and inserting the following:

17                   “(B) The standards shall require”.

18                  (b) STATE STANDARDS.—Section 209(b) of the Clean  
19                  Air Act (42 U.S.C. 7543(b)) is amended—

20                   (1) in paragraph (1)—

21                   (A) in subparagraph (B), by striking “or”  
22                   at the end;

23                   (B) in subparagraph (C), by striking the  
24                   period at the end and inserting “, or”; and

25                   (C) by adding at the end the following:

1 “(D) such State is not applying credits to the  
2 full extent set forth in section 202(a)(7).”; and

3 (2) by adding at the end the following:

4 “(4) If the National Highway Traffic Safety  
5 Administration publishes in the Federal Register a  
6 safety performance metric for an advanced auto-  
7 motive technology or connected vehicle technology  
8 (as such terms are defined in section 202(a)(7)(D))  
9 pursuant to section 32802(b)(1) of title 49, United  
10 States Code, while a waiver is in effect with respect  
11 to a State under this subsection, and such State  
12 does not revise its standard under section 202(a)(1)  
13 as described in section 202(a)(7) within 30 days  
14 after the safety performance metric is formally pub-  
15 lished, the waiver for such State under this sub-  
16 section shall cease to apply.”.

17 **SEC. 503. FUEL ECONOMY CREDITS FOR ADVANCED AUTO-**  
18 **MOTIVE TECHNOLOGIES.**

19 (a) IN GENERAL.—Chapter 329 of title 49, United  
20 States Code, is amended by adding at the end the fol-  
21 lowing new section:

22 **“§ 32920. Fuel economy credits for advanced auto-**  
23 **motive technologies**

24 “(a) DEFINITIONS.—In this section:

1           “(1) ADVANCED AUTOMOTIVE TECHNOLOGY.—

2           The term ‘advanced automotive technology’ means  
3           any vehicle information system, unit, device, or tech-  
4           nology that meets any applicable performance metric  
5           and demonstrates crash avoidance or congestion  
6           mitigation benefits such as any of the following tech-  
7           nologies:

8                   “(A) Forward collision warning.

9                   “(B) Adaptive brake assist.

10                  “(C) Autonomous emergency braking.

11                  “(D) Adaptive cruise control.

12                  “(E) Lane departure warnings.

13                  “(F) Lane keeping assistance.

14                  “(G) Driver attention monitor.

15                  “(H) Left turn assist.

16                  “(I) Intersection movement assist.

17           “(2) CONNECTED VEHICLE TECHNOLOGY.—The

18           term ‘connected vehicle technology’ means a dedi-  
19           cated short-range communications device that meets  
20           applicable performance metrics as defined by the  
21           Advanced Automotive Technology Advisory Com-  
22           mittee established under section 32802 and operates  
23           at 5.9 GHz for the purpose of sending safety mes-  
24           sages between motor vehicles.

1       “(b) CREDITS FOR ADVANCED AUTOMOTIVE TECH-  
2 NOLOGY.—For any model or models of automobiles manu-  
3 factured by a manufacturer after model year 2018 and  
4 equipped with three or more advanced automotive tech-  
5 nologies or one connected vehicle technology as original  
6 equipment, the calculation of the average fuel economy for  
7 all categories of automobiles encompassing such model or  
8 models shall be adjusted in accordance with the method-  
9 ology set forth in section 600.510–12 of title 40, Code of  
10 Federal Regulations, so as to provide fuel economy credits  
11 for advanced automotive technology and connected vehicle  
12 technology with a formally published safety metric that  
13 are equivalent to the carbon-related exhaust emission cred-  
14 its set forth in section 202(a)(7) of the Clean Air Act (42  
15 U.S.C. 7521(a)(7)).

16       “(c) AUTHORITY TO ADD ADDITIONAL ADVANCED  
17 AUTOMOTIVE TECHNOLOGIES AND TO DETERMINE THE  
18 APPROPRIATE LEVEL OF CREDITS FOR SUCH TECH-  
19 NOLOGIES.—Any interested person may petition the Sec-  
20 retary of Transportation to promulgate a rule adding an  
21 advanced automotive technology to the definition set forth  
22 in subsection (a)(1). If the Secretary promulgates such a  
23 rule, the Secretary shall, in consultation with the Adminis-  
24 trator of the Environmental Protection Agency, determine  
25 the appropriate level of greenhouse gas credits and fuel

1 economy credits necessary to incentivize the implementa-  
2 tion of the additional advanced automotive technology.  
3 The Secretary shall ensure that the calculations referenced  
4 in subsection (b) shall provide an equivalent amount of  
5 fuel economy credit for the added advanced automotive  
6 technology. The Secretary shall determine the appropriate  
7 fuel economy credit for any such additional advanced auto-  
8 motive technology based on the relative contribution of any  
9 such additional advanced automotive technology to crash  
10 avoidance or congestion mitigation.

11 “(d) PERIODIC REVIEW.—Not later than the end of  
12 calendar year 2026, and biennially thereafter, the Sec-  
13 retary shall—

14 “(1) in coordination with the Administrator of  
15 the Environmental Protection Agency, review the  
16 methodology for providing fuel economy credits for  
17 advanced automotive technology and connected vehi-  
18 cle technology under subsection (b) that are equiva-  
19 lent to the carbon-related exhaust emission credits  
20 set forth in section 202(a)(7) of the Clean Air Act  
21 and make determinations on and adjustments to  
22 such credits accordingly; and

23 “(2) submit to Congress a report on the results  
24 of such review, determinations, and adjustments.”.

1           (b)           CONFORMING           AMENDMENT.—Section  
2   32902(h)(3) of title 49, United States Code, is amended  
3   by inserting before the period at the end the following:  
4   “or credits under section 32920”.

5           (c) CLERICAL AMENDMENT.—The table of sections  
6   for chapter 329 of title 49, United States Code, is amend-  
7   ed by adding at the end the following:

“32920. Fuel economy credits for advanced automotive technologies.”.

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of contents.</toc-entry>

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<toc-entry idref="H005B1C30A1824DD28321A30315C355B3" level="section">Sec.â€",101.â€",Required reporting of NHTSA agenda.</toc-entry>

<toc-entry idref="H9343663970A74794BBC2E5F54846B3DA" level="section">Sec.â€",102.â€",Corporate responsibility for NHTSA reports.</toc-entry>

<toc-entry idref="H77190BE6CD8641C6846673659CAB1B43" level="section">Sec.â€",103.â€",NHTSA reporting on implementation of inspector general recommendations.</toc-entry>

<toc-entry idref="H60FA707336834D478D1B475AFF22D5F1" level="section">Sec.â€",104.â€",Report on operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies.</toc-entry>

<toc-entry idref="H69B0C1FCD35C444BB1840661774D45FA" level="section">Sec.â€",105.â€",Improvement of data collection on child occupants in vehicle crashes.</toc-entry>

<toc-entry idref="H5C218D9FF2E842B6BB2DD4AC37657056" level="section">Sec.â€",106.â€",Electronic odometer disclosures.</toc-entry>

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<toc-entry idref="H6DAA55301BB14514B8C2FECC2028AA88" level="title">Title IIIâ€"Privacy, hacking prohibition, and cyber security</toc-entry>

<toc-entry idref="HD882CAD9822242829CA6B90A12E8B6E5" level="section">Sec.â€",301.â€",Vehicle data privacy.</toc-entry>

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<section id="H005B1C30A1824DD28321A30315C355B3" section-type="subsequent-section"><enum>101.</enum><header>Required reporting of NHTSA agenda</header><text display-inline="no-display-inline">Not later than December 1 of the year beginning after the date of enactment of this Act, and each year thereafter, the Administrator of the National Highway Traffic Safety Administration shall publish on the public website of the Administration, and file with the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an annual plan for the following calendar year detailing the Administrationâ€™s projected activities, includingâ€¢</text>

<paragraph id="HD26872229B2C4915A4A4F1AC6A3DCC02"><enum>(1)</enum><text>the Administratorâ€™s policy priorities;</text></paragraph>

<paragraph id="H855CDEF17CBA40B284FB9562E2A4A077"><enum>(2)</enum><text>any rulemakings projected to be commenced;</text></paragraph>

<paragraph id="HFAFA3830C5FC4E6196677DB8CECD42DC"><enum>(3)</enum><text>any plans to develop guidelines;</text></paragraph>

<paragraph id="H6C51F54FD1EF4EEA971FFD4A065B5C90"><enum>(4)</enum><text>any plans to restructure the Administration or to establish or alter working groups;</text></paragraph>

<paragraph id="HAD42CEB926D648B184308EE89DC4FD79"><enum>(5)</enum><text>any planned projects or initiatives of the Administration, including the working groups and advisory committees of the Administration; and</text></paragraph>

<paragraph id="H1E879A5C3A8E4B2593BA429D64AC4538"><enum>(6)</enum><text>any projected dates or timetables associated with any of the items described in paragraphs (1) through (5).</text></paragraph></section>

<section commented="no" display-inline="no-display-inline"

id="H9343663970A74794BBC2E5F54846B3DA" section-type="subsequent-section"><enum>102.</enum><header>Corporate responsibility for NHTSA reports</header><text display-inline="no-display-inline">Section 30166(o) of title 49, United States Code, is amendedâ€" </text>

<paragraph id="H3F5A9C97AEF84085BB1856A1CE33C9F4"><enum>(1)</enum><text>in paragraph (1), by striking <quote>may</quote> and inserting <quote>shall</quote>; and</text></paragraph>

<paragraph id="HE5B33A85EF4B406BB5787AE4E8278FBB"><enum>(2)</enum><text>by adding at the end the following:</text>

<quoted-block style="USC" id="H64CC5B22DDAF4A3EBC60BFFE14B07951" display-inline="no-display-inline">

<paragraph id="HFE4DD75C08214E398D08165354CEDD88"><enum>(3)</enum><header>Deadline</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this paragraph, the Secretary shall issue final rules under paragraph (1).</text></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section>

<section id="H77190BE6CD8641C6846673659CAB1B43" section-type="subsequent-section"><enum>103.</enum><header>NHTSA reporting on implementation of inspector general recommendations</header>

<subsection id="H2FE988B1AC70436B98B4351D5D086065"><enum>(a)</enum><header>Inspector General report</header><text display-inline="yes-display-inline">Not later than 90 days after the date of enactment of this Act, and periodically thereafter until the National Highway Traffic Safety Administration has implemented all of the recommendations of the Inspector General of the Department of Transportation, issued June 18, 2015, and contained in report number STâ€"2015â€"063, such Inspector General shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress that the Administration has made to implement the recommendations in such report.</text></subsection>

<subsection id="H2E05A4468CEB4F53B0C85D060D7BA0FD"><enum>(b)</enum><header>Administrator report</header><text display-inline="yes-display-inline">Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the National Highway Traffic Safety Administration has implemented all of the recommendations in the report described in subsection (a), the Administrator of the National Highway Traffic Safety Administration shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress that the Administration has made to implement the recommendations in the report described in subsection (a), including a plan and timetable for implementing any remaining recommendations.</text></subsection></section>

<section id="H60FA707336834D478D1B475AFF22D5F1" section-type="subsequent-section"><enum>104.</enum><header>Report on operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies</header><text display-inline="no-display-inline">Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of

the House of Representatives a report regarding the operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies established under section 31401 of the Moving Ahead for Progress in the 21st Century Act (49 U.S.C. 105 note). The report shall include information about the accomplishments of the Council, the role of the Council in integrating and aggregating electronic and emerging technologies expertise across the National Highway Traffic Safety Administration, the role of the Council in coordinating with other Federal agencies, and the priorities of the Council over the next 5 years.</text></section>

<section id="H69B0C1FCD35C444BB1840661774D45FA" section-type="subsequent-section"><enum>105.</enum><header>Improvement of data collection on child occupants in vehicle crashes</header>

<subsection id="H8C6BC0EEABE74AE6B15F7BA9BC3CC0CC"><enum>(a)</enum><header>In general</header><text>Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall revise the crash investigation data collection system of the National Highway Traffic Safety Administration to include the collection of the following data in connection with vehicle crashes whenever a child restraint system was in use in a vehicle involved in a crash:</text>

<paragraph id="H1C60D5A204E7471F804BF86DF51B9647"><enum>(1)</enum><text>The type or types of child restraint systems in use during the crash in any vehicle involved in the crash, including whether a five-point harness or belt-positioning booster.</text></paragraph>

<paragraph id="HBB7D81939CDA40548FFE3227A2523A62"><enum>(2)</enum><text>If a five-point harness child restraint system was in use during the crash, whether the child restraint system was forward-facing or rear-facing in the vehicle concerned.</text></paragraph></subsection>

<subsection id="H325E062BBFC040FBBD5FD26DB57C7FFD"><enum>(b)</enum><header>Consultation</header><text>In implementing subsection (a), the Secretary shall work with law enforcement officials, safety advocates, the medical community, and research organizations to improve the recordation of data described in subsection (a) in police and other applicable incident reports.</text></subsection>

<subsection id="H453B9FEB3E1045399AC666E651149B18"><enum>(c)</enum><header>Report</header><text>Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on child occupant crash data collection in the crash investigation data collection system of the National Highway Traffic Safety Administration pursuant to the revision required by subsection (a).</text></subsection></section>

<section commented="no" display-inline="no-display-inline" id="H5C218D9FF2E842B6BB2DD4AC37657056" section-type="subsequent-section"><enum>106.</enum><header>Electronic odometer disclosures</header><text display-inline="no-display-inline">Section 32705(g) of title 49, United States Code, is amendedâ€</text>

<paragraph commented="no" display-inline="no-display-inline" id="H65CD4F36267643B6B839E0FF22275A15"><enum>(1)</enum><text display-inline="yes-display-inline">by striking <quote>Not</quote> and inserting <quote>(1) Not</quote>; and</text></paragraph>

<paragraph commented="no" display-inline="no-display-inline" id="H2E9615CDE2454C70A050CDD72540B2BB"><enum>(2)</enum><text display-inline="yes-display-inline">by adding at the end the following:</text>  
<quoted-block display-inline="no-display-inline" id="H17ACB95141F2464290C9C69119F3EF78" style="OLC">  
<paragraph id="HFA678FD6B31D45B5BD9A3BBAE7B45B67" indent="up1"><enum>(2)</enum><text>Notwithstanding paragraph (1) and subject to paragraph (3), a State, without approval from the Secretary under subsection (d), may allow for written disclosures or notices and related matters to be provided electronically if the disclosures or notices and related mattersâ€</text>  
<subparagraph id="H7E14D77E0B514358B0450A023B42155E"><enum>(A)</enum><text display-inline="yes-display-inline">are provided in compliance withâ€</text>  
<clause id="HFF705E3560D64492BEE764E59FF1610E"><enum>(i)</enum><text display-inline="yes-display-inline">the requirements of title I of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); or</text></clause>  
<clause id="HDFBAB86D882D43ECAB4D79BE47893032"><enum>(ii)</enum><text>the requirements of a State law under section 102(a) of such Act (15 U.S.C. 7002(a)); and</text></clause></subparagraph>  
<subparagraph id="H68A6AB49B8F24A34A1A3E26EA15FC8ED"><enum>(B)</enum><text>otherwise meet the requirements under this section, including appropriate authentication and security measures.</text></subparagraph></paragraph>  
<paragraph id="H44CDD6EE57BB452B8B84333A64603B05" indent="up1" commented="no"><enum>(3)</enum><text>Paragraph (2) ceases to be effective on the date the regulations under paragraph (1) become effective. </text></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section></title>  
<title id="H2767487BC68B452D90E87CA22D91B706"><enum>II</enum><header>Motor Vehicle Safety Recalls</header>  
<section id="H3A59380E0E8046599D6917A138D7E8A0" section-type="subsequent-section"><enum>201.</enum><header>Improvements in availability of motor vehicle safety recall information</header>  
<subsection commented="no" id="HA881A9E7FE2C4F04A0B93EDAAB37B15A"><enum>(a)</enum><header>Improvements to Federal website</header><text display-inline="yes-display-inline">Beginning not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall implement and keep current information technology, web design trends, and best practices that will help ensure that motor vehicle safety recall information available to the public on the Federal website established for making available such information is readily accessible and easy to use, includingâ€</text>  
<paragraph commented="no" id="HCADA166A5768469AA31E54824CE3118D"><enum>(1)</enum><text display-inline="yes-display-inline">by improving the organization, availability, readability, and functionality of the website;</text></paragraph>  
<paragraph commented="no" id="HFE6F3D0E64EC4CE08D5A3AE01578FF1D"><enum>(2)</enum><text display-inline="yes-display-inline">by accommodating high-traffic volume; and</text></paragraph>  
<paragraph commented="no" id="H26C4A0DE4D8E484485F0D427B71EB457"><enum>(3)</enum><text>by establishing best practices for scheduling routine website maintenance.</text></paragraph></subsection>  
<subsection id="HE9FAA9ADD1F8489DBA4BA19C409D161C"><enum>(b)</enum><header>Government

Accountability Office public awareness report</header>

<paragraph id="H1887FCA21CCE4DA5A17E59B047C1747E"><enum>(1)</enum><header>In general</header><text display-inline="yes-display-inline">The Comptroller General of the United States shall study the use by consumers, dealers, and manufacturers of motor vehicle safety recall information made available to the public, including the usability and content of the Federal website and manufacturersâ€™ websites established for making available such information and the National Highway Traffic Safety Administrationâ€™s efforts to publicize and educate consumers about such information.</text></paragraph>

<paragraph id="H4A332B24925648B5BF93C8D3185502DE"><enum>(2)</enum><header>Report</header><text>Not later than 2 years after the date of enactment of this Act, the Comptroller General shall issue a report on the findings of the study required by paragraph (1), including recommendations for any actions the Secretary of Transportation can take to improve public awareness and use of the websites described in such paragraph.</text></paragraph></subsection>

<subsection id="H16160A06522C4AAAB48E1A9147EEEEBEF"><enum>(c)</enum><header>Promotion of public awareness</header><text>Section 31301(c) of the Moving Ahead for Progress in the 21st Century Act (49 U.S.C. 30166 note) is amended to read as follows:</text>

<quoted-block display-inline="no-display-inline" id="HA11A1B8AFEF74A5299127AEDFD259F3B" style="OLC">

<subsection commented="no"

id="H356620EDC52549888298EF54E20CBD4E"><enum>(c)</enum><header>Promotion of public awareness</header><text display-inline="yes-display-inline">The Secretary shall improve public awareness of motor vehicle safety recall information made publicly available by periodically updating the method of conveying that information to consumers, dealers, and manufacturers, such as through public service announcements.</text></subsection><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H7EBC0190AE9041F79273C1E38249F71A"><enum>(d)</enum><header>Consumer guidance</header><text>Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall make available to the public on the Internet detailed guidance for consumers submitting motor vehicle safety complaints, includingâ€

<paragraph id="HF56C4E8056C34891B186241548B8919F"><enum>(1)</enum><text>a detailed explanation of what information a consumer should include in a complaint; and</text></paragraph>

<paragraph id="HF62A1DA244094F3BA9149911D17E591F"><enum>(2)</enum><text>a detailed explanation of the possible actions the National Highway Traffic Safety Administration can take to address a complaint and respond to the consumer, including information onâ€

<subparagraph id="H4DB01CEBFB8B4D0DA3D597CC1B593287"><enum>(A)</enum><text>the consumer records, such as photographs and police reports, that could assist with an investigation; and</text></subparagraph>

<subparagraph id="H9A711E27543448D581AE64F705BA4774"><enum>(B)</enum><text>the length of time a consumer should retain the records described in subparagraph (A).</text></subparagraph></paragraph></subsection></section>

<section id="HED6F4B3D88C7410DA126B1084C55A2FF" section-type="subsequent-section"><enum>202.</enum><header>NHTSA recall notification and coordination</header>

<subsection id="H1D16A88CAACF4375A31B1E9F8769DC29"><enum>(a)</enum><header>Notification by email and other electronic means</header>

<paragraph id="H65147E1DD2D8494CA34A56BE88EF980F"><enum>(1)</enum><header>To owners, purchasers, and lessees</header><text>Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation shall prescribe a final rule revising the regulations under paragraphs (a) and (b) of section 577.7 of title 49, Code of Federal Regulations, relating to notification of motor vehicle defects and noncompliance toâ€"></text>

<subparagraph id="H9175B0F345FC4DF28323E8EAC2CF5DCE"><enum>(A)</enum><text display-inline="yes-display-inline">require notification by email (if the email address of the person required to be notified is available to and has been authorized to be used by the manufacturer) in addition to notification by first class mail (or, if the postal address of such person is not reasonably ascertainable by the manufacturer, instead of notification by first class mail); and</text></subparagraph>

<subparagraph id="H5E240361AD8A448AB5FD762DE8C984CE"><enum>(B)</enum><text>encourage notification by other electronic means, including through social media and targeted online campaigns.</text></subparagraph></paragraph>

<paragraph id="H61FBD5553BB42FDB86DCF91A420F40E"><enum>(2)</enum><header>To Secretary of Transportation</header><text>Section 30118(c) of title 49, United States Code, is amended by inserting <quote>or email</quote> after <quote>certified mail</quote>.</text></paragraph></subsection>

<subsection id="H4C82900953444899BFDBFEAB5E3D60D2"><enum>(b)</enum><header>Coordination with manufacturer required</header><text display-inline="yes-display-inline">Section 30118(a) of title 49, United States Code, is amendedâ€"></text>

<paragraph id="H90A62B9F2E8A4804AB2FAF8C31638A07"><enum>(1)</enum><text>by striking <quote>The Secretary of Transportation</quote> and inserting <quote>(1) The Secretary of Transportation</quote>; and </text></paragraph>

<paragraph id="HED3C7EE651C147F1B288633A8A9054EA"><enum>(2)</enum><text>by adding at the end the following: </text>

<quoted-block style="traditional" id="H9E30659BBF6E4684B928E3F935AABE15" display-inline="no-display-inline">

<paragraph id="H46C41EACAF744A98AE9D6571091213BC" indent="up1"><enum>(2)</enum><text display-inline="yes-display-inline">Prior to publishing notice of any defect or noncompliance, the Secretary shall draft such notice in coordination with the affected manufacturer or manufacturers. Such notice may not be published unless all vehicle identification numbers for the affected vehicles have been made available to the Secretary in such a manner that, beginning immediately after the notice is published, consumers can determine, by a vehicle identification number search functionality made available on the Internet, whether particular vehicles are involved in the recall. The vehicle identification numbers shall be made available to the Secretary pursuant to the following process: </text>

<subparagraph id="H11C2237CD8084063ADCC5A6E58E5F8D9"><enum>(A)</enum><text>Upon the decision by the Administrator of the National Highway Traffic Safety Administration to publish a notice of defect or noncompliance, the Administrator shall first notify each affected manufacturer, including any suppliers responsible for the defect or noncompliance.</text></subparagraph>

<subparagraph id="H0A04E3F8CDD44B4F8B5159473058931D"><enum>(B)</enum><text>Any supplier of parts that the Administrator has determined to be defective or noncompliant under

this section shall identify all parts that are subject to the recall and provide the Administrator and each affected manufacturer all part numbers for each affected part within 3 business days after receiving notice under subparagraph

(A).

Upon receipt of notice from the Administrator or a supplier as required under this paragraph, each affected manufacturer shall identify the vehicle identification number for each affected vehicle and provide, within 5 business days after receiving such notice, such vehicle identification numbers to the Administrator in a searchable format determined by the Administrator.

Any public notice of any defect or noncompliance shall also include, to the extent reasonable under the circumstances, whether remedies are available with respect to each defective or noncompliant part and each manufacturer involved in the recall.

Estimated time of availability of each remedy

Section 30119(a) of title 49, United States Code, is amended

by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively;

by inserting after paragraph (5) the following:

to the extent reasonable under the circumstances, for each remedy for the defect or noncompliance, an estimate, stated as a time range not longer than 2 months, of when consumers should expect to have access to such remedy;

Option for purchasers to provide email to manufacturers

Section 30117 of title 49, United States Code, is amended by adding at the end the following:

Option for purchasers to provide email to manufacturers

At the time when a motor vehicle is purchased or leased from a manufacturer or from a dealer that has a franchise, operating, or other agreement with the manufacturer, the manufacturer shall give the purchaser or lessee of the motor vehicle the option to provide an email address or other information to enable notification by electronic means in the event of a safety recall or noncompliance as provided under section 577.5 of title 49, Code of Federal Regulations. Email addresses and other contact information collected under this subsection may not be used to contact the purchaser or lessee for any reason, including marketing, other than to provide a safety recall or noncompliance

notice.</text></subsection><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H970472EEFBB14FF89529DFFB3958505F"><enum>(e)</enum><header>Recall completion rates report</header>

<paragraph id="H84C81579FE2E4931A2F6A06346AEC897"><enum>(1)</enum><header>Analysis required</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this Act, and biennially thereafter for 4 years, the Secretary of Transportation shallâ€

<subparagraph id="H0961A27BB93346A8BD694FE1BE129F33"><enum>(A)</enum><text>conduct an analysis of vehicle safety recall completion rates to assess potential actions by the National Highway Traffic Safety Administration to improve vehicle safety recall completion rates; and </text></subparagraph>

<subparagraph id="H26A323D697C0402EA3AF51709BAA40C3"><enum>(B)</enum><text>submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the analysis. </text></subparagraph></paragraph>

<paragraph

id="H135750270089421891A92322EC49E338"><enum>(2)</enum><header>Contents</header><text>Each report shall includeâ€

<subparagraph id="H0DEFAC84A0C24A23AEB9D9DB49BD61B9"><enum>(A)</enum><text>the annual recall completion rate by manufacturer, model year, component (such as brakes, fuel systems, and air bags), and vehicle type (passenger car, sport utility vehicle, passenger van, and pick-up truck) for each of the 5 years before the year the report is submitted; and</text></subparagraph>

<subparagraph id="H719663E87AE54C8DB525834D549AC17F"><enum>(B)</enum><text>the methods by which the Secretary has conducted analyses of these recall completion rates to determine trends and identify risk factors associated with lower recall rates.</text></subparagraph> </paragraph></subsection>

<subsection id="H4DC763D4835446499D999A846821E126"><enum>(f)</enum><header>Inspector General audit of motor vehicle recalls</header>

<paragraph id="H0544EF6948A94925A3B6079EB86E9068"><enum>(1)</enum><header>Audit required</header><text display-inline="yes-display-inline">The Inspector General of the Department of Transportation shall conduct an audit of the National Highway Traffic Safety Administrationâ€™s management of motor vehicle safety recalls. </text></paragraph>

<paragraph

id="H5DBF90D0CF264A74A4228F708C6FCF79"><enum>(2)</enum><header>Contents</header><text>The audit shall include a determination of whether the National Highway Traffic Safety Administrationâ€

<subparagraph

id="H4F2A4DF22FFE4A2C8203049F7200A839"><enum>(A)</enum><text>appropriately monitors recalls to ensure the appropriateness of scope and adequacy of recall completion rates and remedies; </text></subparagraph>

<subparagraph id="H42DDA28DE584408FB3564538D9DDA205"><enum>(B)</enum><text>ensures that manufacturers provide safe remedies, at no cost to consumers; </text></subparagraph>

<subparagraph id="H824EB38EED7F4ED7AD75907E886214C2"><enum>(C)</enum><text>is capable of coordinating recall remedies and processes; and </text></subparagraph>

<subparagraph id="H5A798B27DE2C440AAD7E982AAFC7C6AE"><enum>(D)</enum><text>can improve

its policy on consumer notice to combat the effects of the dilution of the effectiveness of recall notices due to the number or frequency of such notices.

</text></subparagraph></paragraph></subsection></section>

<section id="HC2747A78B4E84FE59CD6AD04E9D72B49" section-type="subsequent-section"><enum>203.</enum><header>Recall notification at State vehicle registration</header>

<subsection id="HA75251AEFA61489AA447FF9BB1CBD463"><enum>(a)</enum><header>Recall program participation required</header><text display-inline="yes-display-inline">Section 30303 of title 49, United States Code, is amended by adding at the end the following:</text>

<quoted-block style="OLC" id="H5804A2097F334E32AECB7517A04F69FE" display-inline="no-display-inline">

<subsection id="H604FE4BA3EAE4EA6BD141DF145BC971E"><enum>(d)</enum><header>Recall notice required</header><text display-inline="yes-display-inline">A participating State shallâ€

<paragraph id="H0279B7D19CBB4ADAB32CA075604B1611"><enum>(1)</enum><text>agree to notify, at the time of vehicle registration, each owner or lessee of a motor vehicle presented for registration in the State of any open recall on that vehicle;

</text></paragraph>

<paragraph id="HF430BA32F55546B7A30609EF53134204"><enum>(2)</enum><text>provide the open motor vehicle recall information at no cost to each owner or lessee of a motor vehicle presented for registration in the State; and </text></paragraph>

<paragraph id="H45CDB91A378A4D279B82CC5D840A340E"><enum>(3)</enum><text>provide such other information as the Secretary may require. </text></paragraph> </subsection>

<subsection id="HFA4442155C53452895C64724F17ADEF5"><enum>(e)</enum><header>Definitions</header><text>In this section:</text>

<paragraph id="H2FCB565482F5487CBD4E563969E20A02"><enum>(1)</enum><header>Motor vehicle</header><text>The term <quote>motor vehicle</quote> has the meaning given the term under section 30102(a) of this title. </text></paragraph>

<paragraph id="H53F7150573A24C47B2988B3139951C03"><enum>(2)</enum><header>Open motor vehicle recall</header><text>The term <quote>open motor vehicle recall</quote> means a recall for which a notification by a manufacturer has been provided under section 30119 of this title, and that has not been remedied under section 30120 of this title. </text></paragraph>

<paragraph id="H3C3148723767496E83804FAF29760FBD"><enum>(3)</enum><header>Registration</header><text>The term <quote>registration</quote> means the process for registering a motor vehicle in the State or renewing the registration for such motor vehicle. </text></paragraph>

<paragraph id="H59AE018BCDBF41E89BCB84DF9838E17C"><enum>(4)</enum><header>State</header><text>The term <quote>State</quote> has the meaning given the term under section 101(a) of title 23.</text> </paragraph></subsection><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="HBC5DE82199FD4381870B844F887CCA81"><enum>(b)</enum><header>Conforming amendment</header><text>Section 30303(a) of title 49, United States Code, is amended by inserting <quote>and subsection (d) of this section</quote> before the

period.</text></subsection></section>

<section commented="no" id="H52E81261D57C4062BD2EAA9148D439FE" section-type="subsequent-section"><enum>204.</enum><header>Recall obligations under bankruptcy</header><text display-inline="no-display-inline">Section 30120A of title 49, United States Code, is amended by striking <quote>chapter 11 of title 11,</quote> and inserting <quote>chapter 7 or chapter 11 of title 11</quote>.</text></section>

<section id="HE1A2DCF3EB44483A8086A8D9B593DD64" section-type="subsequent-section"><enum>205.</enum><header>Application of remedies for defects and noncompliance</header><text display-inline="no-display-inline">Section 30120(g)(1) of title 49, United States Code, is amended by striking <quote>10 calendar years</quote> and inserting <quote>15 calendar years</quote>.</text></section>

<section id="H8D21993C88BA4AE383C9D44DD3322FBA"><enum>206.</enum><header>National vehicle identification number database</header>

<subsection id="HF1183EAA1C0D4603997EB3D6882E1192"><enum>(a)</enum><header>In general</header><text>Chapter 301 of title 49, United States Code, is amended by inserting after section 30119 the following:</text>

<quoted-block style="USC" id="HCD7C589CB27C4FC9A9EFFB0FD4489144" display-inline="no-display-inline">

<section id="H7A6B276E66274F82873936C226798C69"><enum>30119A.</enum><header>National vehicle identification number database</header>

<subsection id="H4C9F8C77FE084202A8B7C2A2EFA544A6" display-inline="no-display-inline"><enum>(a)</enum><header>Establishment</header><text display-inline="yes-display-inline">Not later than 2 years after the date of enactment of this section, the Secretary of Transportation shall complete the establishment of a national database of vehicle identification numbers and other information provided by States in accordance with subsection (b).</text></subsection>

<subsection id="H48BA288D1F2C445397FFE728245C829C"><enum>(b)</enum><header>States required to provide VIN and vehicle registration information</header>

<paragraph id="H33D7EEEE4F2AE4F20ABB2E524668E6E0F"><enum>(1)</enum><header>In general</header><text display-inline="yes-display-inline">Each State shall provide to the Secretary, in such manner as determined by the Secretary, the vehicle identification number of each motor vehicle registered in the State, and shall also provide, associated with such vehicle identification numberâ€</text>

<subparagraph id="H965806B69F974F69A307755E4114FCCA"><enum>(A)</enum><text>the make, model, and year of manufacture of the motor vehicle; and</text></subparagraph>

<subparagraph id="HCF16E7A9E8BB4FFBB51BB6B96F04FE9E"><enum>(B)</enum><text>the name and address of the person to whom the vehicle is registered, and an email address for such person if such person provides an email address.</text></subparagraph></paragraph>

<paragraph id="H355C26F84116414E9E7BEEFF5F6C1DFA"><enum>(2)</enum><header>Timetable</header><text display-inline="yes-display-inline">Each State shall begin to provide the Secretary with the information required under paragraph (1) on the date determined by the Secretary and shall provide such information for all motor vehicles registered in the State not later than 2 years after the date of enactment of this section.</text></paragraph>

<paragraph id="H6120C1F648F1416383B2E33CDF7DDDEC"><enum>(3)</enum><header>Updating of information</header><text display-inline="yes-display-inline">Each State shall verify that the information provided to the Secretary under to paragraph (1) is current each

time a motor vehicle is subsequently registered in the State and shall provide any updated information to the Secretary not later than 7 days after each such subsequent registration when a change has occurred.</text></paragraph></subsection>

<subsection id="HCB171B7048224019AA135C815A38B16F"><enum>(c)</enum><header>Access to information by manufacturers in the event of a recall</header><text display-inline="yes-display-inline">In order to facilitate notification of a defect or noncompliance under section 30119, an entity required to send notification under such section may submit to the Secretary a request containing the vehicle identification numbers of the vehicles containing a defect or noncompliance. Upon receiving such a request, the Secretary shall, within 2 business days, provide the entity the names and addresses of the persons to whom such vehicles are registered, and the email addresses for such persons who have provided an email address.</text></subsection>

<subsection id="HB2F9FDA6A7B7432DA6D078C1CD8851FF" commented="no"><enum>(d)</enum><header>Information security and limitation on use</header><text display-inline="yes-display-inline">The Secretary shall establish and maintain reasonable security measures for the information submitted to and released from the database established under this section. Neither the Secretary nor any entity obtaining information from the Secretary shall disclose information contained in the database for any other purpose than providing the required notification to consumers about a defect or noncompliance.</text></subsection>

<subsection id="H441830E3353849FCAE4E720317D205E7"><enum>(e)</enum><header>Updating existing public website</header><text display-inline="yes-display-inline">Not later than 2 years after the date of enactment of this section, the Secretary shall update the public website, [www.safercar.gov](http://www.safercar.gov), established pursuant to section 31301 of the Moving Ahead for Progress in the 21st Century Act (49 U.S.C. 30166 note), to permit the searching and processing for multiple vehicle identification numbers in a single search request.</text></subsection>

<subsection id="H9B5C109EC5A3468A80C912DB519F25B5"><enum>(f)</enum><header>Contracted entities</header><text>Nothing in this section shall be construed to prohibit the Secretary from engaging an outside contractor for the establishment and maintenance of the database required by this section if the Secretary determines that such contractor adheres to appropriate and reasonable security measures described in subsection (d).</text></subsection>

<subsection id="H3FD0EFF5A4284F9DA41415108C4F7216"><enum>(g)</enum><header>Freedom of Information Act exemption</header><text display-inline="yes-display-inline">Information contained in the national vehicle identification number database established under this section shall be exempt from public disclosure under section 552(b)(3) of title 5.</text></subsection></section><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H7913EBE1C9E14A15A4B9153EE515E2EC"><enum>(b)</enum><header>Clerical amendment</header><text>The table of sections for chapter 301 of title 49, United States Code, is amended by inserting after the item relating to section 30119 the following:</text>

<quoted-block style="USC" id="HFBEE6E8532E543A7B8E55D3C1918F964" display-inline="no-display-inline">

<toc regeneration="no-regeneration">

<toc-entry level="section">30119A. National vehicle identification number database.</toc-entry></toc><after-quoted-block>.</after-quoted-block></quoted-block>

</subsection></section> </title>

<title id="H6DAA55301BB14514B8C2FECC2028AA88" commented="no"><enum>III</enum><header>Privacy, hacking prohibition, and cyber security</header>

<section id="HD882CAD9822242829CA6B90A12E8B6E5" section-type="subsequent-section" commented="no"><enum>301.</enum><header>Vehicle data privacy</header>

<subsection id="H7F6349C5C4E1434C9BC617B96BF60E83" commented="no"><enum>(a)</enum><header>In general</header><text display-inline="yes-display-inline">Part C of subtitle VI of title 49, United States Code, is amended by inserting after chapter 323 the following new chapter:</text>

<quoted-block style="USC" id="H8809C10BD66B4A8BB34A459245C9FF9C" display-inline="no-display-inline">

<chapter id="H03879000356A40D7B8D014B80F03C490" commented="no"><enum>324</enum><header>Vehicle Data Privacy </header>

<toc container-level="chapter-container" quoted-block="no-quoted-block" lowest-level="section" idref="H03879000356A40D7B8D014B80F03C490" regeneration="yes-regeneration" lowest-bolded-level="division-lowest-bolded">

<toc-entry idref="HD17E9A13D591402E97225AFCE0EBA21E" level="section">Sec.</toc-entry>

<toc-entry level="section">32401.â€,Definitions.</toc-entry>

<toc-entry level="section">32402. Vehicle data privacy.</toc-entry> </toc>

<section id="HD17E9A13D591402E97225AFCE0EBA21E" commented="no"><enum>32401.</enum><header>Definitions</header><text display-inline="no-display-inline">In this chapter:</text>

<paragraph id="H9929C85CFB094707867363FAE343BC41" commented="no"><enum>(1)</enum><header>Administrator</header><text display-inline="yes-display-inline">The term <term>Administrator</term> means the Administrator of the National Highway Traffic Safety Administration.</text></paragraph>

<paragraph id="HDB582D15F4D5418E93EEC46E8521EC3C" commented="no"><enum>(2)</enum><header>Covered information</header><text>The term <term>covered information</term> means information thatâ€</text>

<subparagraph id="H3C23A5139651489C8F0FF9C7FB7DC35D" display-inline="no-display-inline" commented="no"><enum>(A)</enum><text>passenger motor vehicles collect, generate, record, or store in electronic form that may be retrieved by or on behalf of the manufacturer of the original motor vehicle equipment; or</text></subparagraph>

<subparagraph id="H6248469171254460B1143E546F291BE7" display-inline="no-display-inline" commented="no"><enum>(B)</enum><text display-inline="yes-display-inline">is provided by the owner, lessee, or renter, if applicable, of a vehicle who subscribes to or registers for technologies and services provided by, made available through, or offered on behalf of the manufacturer that involves the collection, use, or sharing of information that is collected, generated, recorded, or stored by a vehicle.</text></subparagraph></paragraph>

<paragraph id="H14387C290F924F4DAA6EC3E5809DA203" commented="no"><enum>(3)</enum><header>Manufacturer; motor vehicle</header><text display-inline="yes-display-inline">The terms <term>manufacturer</term> and <term>motor vehicle</term> have the meanings given those terms in section 30102.</text></paragraph>

<paragraph id="HC99A1E1ACEDD4404B11999628705B336" commented="no"><enum>(4)</enum><header>Secretary</header><text>The term

<term>Secretary</term> means the Secretary of Transportation.

</text></paragraph></section>

<section id="HD18019E15014461B8F01338F3A1F3856" commented="no"><enum>32402.</enum><header>Vehicle data privacy</header>

<subsection id="HE8E3C31E86C24CFC81165CDF6666CCFB" commented="no"><enum>(a)</enum><header>In general</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this chapter, each manufacturer of motor vehicles sold or offered for sale in the United States shall develop and implement a privacy policy outlining the practices of such manufacturer regarding the collection, use, and sharing of covered information. </text></subsection>

<subsection id="H7410ACBEAD664EA79C68D87CD8E9395D" commented="no"><enum>(b)</enum><header>Identification of privacy policy requirements</header><text display-inline="yes-display-inline">The privacy policy developed and implemented pursuant to subsection (a) shall identify whether the manufacturer will provide an owner, lessee, or renter, if applicable, with any of the following:</text>

<paragraph id="H4CBCD333EE2B4CF294286CA72BB7BF32" commented="no"><enum>(1)</enum><text>Notices about the manufacturer's collection, use, and sharing of covered information.</text></paragraph>

<paragraph id="H845C6ACE5D74408183EA214F6FC4014D" commented="no"><enum>(2)</enum><text>The choices that are available to the owner, lessee, or renter regarding the collection, use, and sharing of covered information.</text></paragraph>

<paragraph id="HE07DC2C99B2D48E8A1D70EADDEF30CAAB" commented="no"><enum>(3)</enum><text>How and under what circumstances covered information is collected.</text></paragraph>

<paragraph id="H02B12323B62E46388AFE866C1E2FECA7" commented="no"><enum>(4)</enum><text>A commitment to retain the covered information no longer than is determined necessary by the manufacturer for legitimate business purposes.</text></paragraph>

<paragraph id="H8E2E116BD3DA4395B59ED33955A8F475" commented="no"><enum>(5)</enum><text>A commitment to implement reasonable measures to protect covered information against loss and unauthorized access or use.</text></paragraph>

<paragraph id="H2FD4CF3B83BA4DEC821AF560EC962DA8" commented="no"><enum>(6)</enum><text>A commitment to implement reasonable measures to maintain the accuracy of covered information and to provide the owner, lessee, or renter with reasonable means to review and correct information provided by the owner, lessee, or renter, if applicable.</text></paragraph>

<paragraph id="HA07AA2A0F5BC48F0973B7505CC605168" commented="no"><enum>(7)</enum><text>A commitment to take reasonable steps to ensure that the manufacturer and other entities that receive the covered information by or on behalf of the manufacturer adhere to the privacy policy.

</text></paragraph></subsection>

<subsection id="H465AD4082BE347C2AE545DED15F32E4A" commented="no"><enum>(c)</enum><header>Filing and publication</header>

<paragraph id="HE3B31D803F8E45D5A91D4E93F0377EFA" commented="no"><enum>(1)</enum><text>Not later than 1 year after the date of enactment of this chapter, the manufacturer shall file with the Secretary a copy of the privacy policy developed and implemented pursuant to subsection (a) and a copy of the privacy policy requirements developed and implemented pursuant to subsection (b).

commented="no"><enum>(1)</enum><header>Privacy policy</header><text display-inline="yes-display-inline">Not later than 60 days after the implementation of a privacy policy by a manufacturer described in subsection (a), the manufacturer shall file such policy with the Secretary.</text></paragraph>

<paragraph id="HEEC5ABE3BE88494497BA681C5F91FA33">

commented="no"><enum>(2)</enum><header>Website publication</header><text>Not later than 30 days after the submission of a privacy policy pursuant to paragraph (1) or (3), the Secretary shall make such policy publicly accessible on a website operated by the Secretary.</text></paragraph>

<paragraph id="H5D11468476D94E8E9D05A3A7E56EBC08">

commented="no"><enum>(3)</enum><header>Update of privacy policy</header><text>Not later than 30 days after updating the terms of a privacy policy submitted pursuant to paragraph (1), the manufacturer shall file the updated policy with the Secretary.</text></paragraph></subsection>

<subsection id="H0FF699D363344494AD4899DB830335F4">

commented="no"><enum>(d)</enum><header>Enforcement</header>

<paragraph id="HA4D2A41EB8F04250862685AB78F7CAA8">

commented="no"><enum>(1)</enum><header>Civil penalty</header><text display-inline="yes-display-inline">A manufacturer that does not meet the requirements of subsection (a) or (b) or that violates any of the terms of the privacy policy submitted pursuant to paragraph (1) or (3) of subsection (c) is liable to the United States Government for a civil penalty of not more than \$5,000 per day. The maximum penalty under this section for a series of violations by a single manufacturer is \$1,000,000.</text></paragraph>

<paragraph id="HE5C7EFBF743B45F6900C71D788B3A801">

commented="no"><enum>(2)</enum><header>Liability protection</header><text display-inline="yes-display-inline">A manufacturer that submits a privacy policy that meets all of the requirements described under subsection (b) is not subject to civil penalties described in paragraph (1). </text> </paragraph></subsection>

<subsection id="HFAC9FE5AFE9C4F9AB5F7F2DCB463A67D">

commented="no"><enum>(e)</enum><header>Safe harbor</header><text>A manufacturer whose privacy policy identifies that such manufacturer will provide an owner, lessee, or renter, if applicable, with all of the items described under subsection (b) shall not be subject to the provisions of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) with respect to any unfair or deceptive act or practice relating to privacy.</text></subsection> </section></chapter><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H4D91BCA5913445A4B16E4F64714272E4">

commented="no"><enum>(b)</enum><header>Vehicle Event Data Recorder Study</header>

<paragraph id="H39E43F6E635F4903909875D70A58A91A">

commented="no"><enum>(1)</enum><header>Study by Administrator</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall submit to the Secretary of Transportation a studyâ€"</text>

<subparagraph id="H04F7AF4BB2BB4DDCB9265F768A6D096B">

commented="no"><enum>(A)</enum><text display-inline="yes-display-inline">to determine the appropriate amount of time for an event data recorder installed in a passenger motor vehicle to capture and record for retrieval vehicle-related data related to an event to provide sufficient information to investigate the cause of a motor vehicle

crash; and</text></subparagraph>

<subparagraph id="H89531991843A4E7B8628332B3D4C057B"  
commented="no"><enum>(B)</enum><text>to identify data that may be appropriate to  
transfer to a first responder for the treatment of a crash victim.</text>  
</subparagraph></paragraph>

<paragraph id="H75F70BAF42BA40A1B8D637D601343402"  
commented="no"><enum>(2)</enum><header>Report by Secretary</header><text>Not later than  
10 days after the submission of the study required under paragraph (1), the Secretary  
shall submit to the Committee on Energy and Commerce of the House of Representatives  
and the Committee on Commerce, Science, and Transportation of the Senate a report that  
contains the results of the study conducted by the Administrator pursuant to paragraph  
(1). </text> </paragraph></subsection>

<subsection id="H264BF856147747418DACCA03019365A6"  
commented="no"><enum>(c)</enum><header>Clerical amendment</header><text>The analysis of  
subtitle VI of title 49, United States Code, is amended by inserting after the item  
relating to chapter 323 the following:</text>  
<quoted-block style="USC" id="H2E110B1FBA7A44BB944115482145C85E" display-inline="no-  
display-inline">  
<toc regeneration="no-regeneration">  
<multi-column-toc-entry level="section"><toc-enum>324.</toc-enum><level-header  
level="section">Vehicle Data Privacy</level-header><target>32401</target></multi-  
column-toc-entry></toc><after-quoted-block>.</after-quoted-block></quoted-block>  
</subsection></section>

<section id="H68DF99FF3B7A4F9492A1374ECB7686A0"  
commented="no"><enum>302.</enum><header>Motor vehicle data hacking</header>  
<subsection  
id="HF4DEECF5F8C1430888614ADAB0DDEB9B"><enum>(a)</enum><header>Amendment</header><text  
display-inline="yes-display-inline">Section 30122 of title 49, United States Code, is  
amended by adding at the end the following new subsection:</text>  
<quoted-block style="USC" id="H884E1B3AD0404D8C9364A836A51EE341" display-inline="no-  
display-inline">  
<subsection id="HD0AF38A8F51B4A3FA4505DCFA422D814"><enum>(d)</enum><header>Motor  
vehicle data hacking prohibited</header>  
<paragraph  
id="H6A966C8565DF4B40B5DF4352352E9E05"><enum>(1)</enum><header>Prohibition</header><tex  
t display-inline="yes-display-inline">It shall be unlawful for any person to access,  
without authorization, an electronic control unit or critical system of a motor  
vehicle, or other system containing driving data for such motor vehicle, either  
wirelessly or through a wired connection.</text></paragraph>  
<paragraph  
id="HCD7D77158819484A8972F6C787188FD3"><enum>(2)</enum><header>Definitions</header><tex  
t>In this subsection:</text>  
<subparagraph id="HA3E4506957B74C88AD11E6DA8FCD59AA"  
commented="no"><enum>(A)</enum><header>Critical System</header><text>The term  
<term>critical system</term> means software, firmware, or hardware located within or on  
a motor vehicle that, if accessed without authorization, can affect the movement of the  
vehicle. </text></subparagraph>  
<subparagraph id="H003821CC4DAD47529FEE0956F5436D83"

commented="no"><enum>(B)</enum><header>Driving data</header><text display-inline="yes-display-inline">The term <term>driving data</term> means information that a motor vehicle collects, generates, records, or stores in electronic form and information that is provided by the owner, lessee, or renter, if applicable, of a motor vehicle who subscribes to or registers for technologies and services provided by, made available through, or offered on behalf of the manufacturer that involves the collection, use, or sharing of information that is collected, generated, recorded, or stored by the motor vehicle.</text> </subparagraph>

<subparagraph id="H359298EF761C47ECA3C4763E501D6ECF" commented="no"><enum>(C)</enum><header>Electronic Control Unit</header><text display-inline="yes-display-inline">The term <term>electronic control unit</term> means an electrical system interface or software that can impact the movement, functioning, or operation of any component of a vehicle.</text></subparagraph></paragraph></subsection><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H7C6537CF7C7C4642BAC078A5AADAD36C"><enum>(b)</enum><header>Civil penalties</header><text display-inline="yes-display-inline">Section 30165(a) of title 49, United States Code, is amended by inserting at the end the following new paragraph:</text>

<quoted-block style="USC" id="H5513BFB8837A4439BD7ADBA4CE5F1BD3" display-inline="no-display-inline">

<paragraph id="H21F2710A43584A9085565EAAD869B6B9"><enum>(5)</enum><header>Motor vehicle data hacking</header><text display-inline="yes-display-inline">Notwithstanding paragraph (1), a person who violates section 30122(d) is liable to the United States Government for a civil penalty of not more than \$100,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle.</text></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></subsection></section>

<section id="HDAE55E01B26C40A08625168828CBB3DA" commented="no"><enum>303.</enum><header>Automotive Cybersecurity Advisory Council</header>

<subsection id="HBF51C4C75BB949CCAF1D3E58E23B1E0E" commented="no"><enum>(a)</enum><header>In general</header><text display-inline="yes-display-inline">Part A of subtitle VI of title 49, United States Code, is amended by adding at the end the following new chapter:</text>

<quoted-block style="USC" id="HD2DB741FDE4D46D8BFDD58A698136459" display-inline="no-display-inline">

<chapter id="H28F0C1B3B4DB40CFAC85C014684E2F17" commented="no"><enum>307</enum><header>Cybersecurity</header>

<toc container-level="chapter-container" quoted-block="no-quoted-block" lowest-level="section" idref="H28F0C1B3B4DB40CFAC85C014684E2F17" regeneration="yes-regeneration" lowest-bolded-level="division-lowest-bolded">

<toc-entry level="section">Sec.</toc-entry>

<toc-entry level="section">30701.â€¢Automotive Cybersecurity Advisory Council.</toc-entry> </toc>

<section id="H8F69CD0421C54C5B9EAE290B54D9590D" commented="no"><enum>30701.</enum><header>Automotive Cybersecurity Advisory Council</header>

<subsection id="H11F48DA579FE4F5C841E1555DE192B38"  
commented="no"><enum>(a)</enum><header>Establishment</header>  
<paragraph id="H7DD5760DA32A4FF292A2D5A82D82489C"  
commented="no"><enum>(1)</enum><header>In general</header><text display-inline="yes-  
display-inline">Not later than 1 year after the date of enactment of this chapter, the  
Administrator of the National Highway Traffic Safety Administration shall establish an  
Automotive Cybersecurity Advisory Council (in this chapter referred to as the  
<quote>Council</quote>) to develop cybersecurity best practices for manufacturers of  
automobiles offered for sale in the United States.</text></paragraph>  
<paragraph id="HC10DB7E56E56421AABCF6C32E55A9E9B"  
commented="no"><enum>(2)</enum><header>Notice of intent</header><text display-  
inline="yes-display-inline">Not later than 30 days after the date of enactment of this  
chapter, the Administrator shall issue a notice of intent to open a proceeding  
establishing the Council. This notice shall be made public in the Federal Register and  
on a website maintained by the Administrator.</text></paragraph>  
<paragraph id="HC3AEEAB908774D4A8B252414CA336233"  
commented="no"><enum>(3)</enum><header>Proceeding and appointment of  
members</header><text display-inline="yes-display-inline">Not later than 60 days after  
the notice of intent is published pursuant to paragraph (2), the Administrator shall  
formally open a proceeding to establish the Council, and shall consult with the  
agencies listed under paragraph (4) and appoint members of the Council as set forth in  
such paragraph.</text></paragraph>  
<paragraph id="H73BCA3492B854F588D190CF092CE2E13"  
commented="no"><enum>(4)</enum><header>Membership</header>  
<subparagraph id="H6F5F76891C894B84AF5C758C1BF53C14"  
commented="no"><enum>(A)</enum><header>Federal government members</header><text>The  
Council shall be comprised of the Administrator of the National Highway Traffic Safety  
Administration and at least one representative from each of the following  
agencies:</text>  
<clause id="H64652A99B46D417B9533F9C0B2F0B024" commented="no"><enum>(i)</enum><text>The  
Department of Defense.</text></clause>  
<clause id="H1E6BB2BFCA2E413C9A7468677F333B01"  
commented="no"><enum>(ii)</enum><text>The National Institute of Standards and  
Technology.</text></clause>  
<clause id="H5FFACA99C4624CB2817DBE3261ED6711"  
commented="no"><enum>(iii)</enum><text>The National Highway Traffic Safety  
Administration, other than the Administrator.</text></clause></subparagraph>  
<subparagraph id="H8AE9F549386343D094F23FA2AB3683E9"  
commented="no"><enum>(B)</enum><header>Members from manufacturers</header><text  
display-inline="yes-display-inline">Not later than 180 days after the date of enactment  
of this chapter, the Administrator shall require each manufacturer of automobiles that  
manufactures more than 20,000 automobiles sold in the previous calendar year in the  
United States, in such manner as the Administrator determines necessary, to appoint one  
representative of the manufacturer to serve as a member on the Council.  
</text></subparagraph>  
<subparagraph id="H5C68094296C44E24A78BE02793F708E6"  
commented="no"><enum>(C)</enum><header>Other members</header><text display-inline="yes-  
display-inline">The Administrator shall invite one representative from a company,

organization, or association representing authorized franchised car dealerships, independent repair shops, consumer advocates, parts suppliers (for tiers one, two, three and four), standards-setting bodies, academics, and security researchers to serve as a member on the Council.

(D) Limitation  
Not fewer than 50 percent of the members on the Council shall be representatives of manufacturers of automobiles.

(b) Meetings  
The Council shall meet not less than quarterly to develop best practices for cybersecurity for manufacturers of automobiles offered for sale in the United States. Not later than 10 business days before the day on which a meeting is held, the Administrator shall publish the meeting time and agenda of each meeting in the Federal Register and on a publicly accessible website. Any meeting held by the Council shall be closed to the public.

(c) Development of best practices  
Not later than 1 year after Council is established pursuant to subsection (a) (1), the Council shall develop cybersecurity best practices for manufacturers of automobiles offered for sale in the United States. Such best practices shall be approved by a simple majority of members of the Council and may include the following:

(1)  
The quality of security controls implemented within software, firmware, and hardware used within automobiles.

(2)  
The design of the automobile's internal architecture with respect to connections between vehicle systems and critical safety systems.

(3)  
The security specifications required by manufacturers of automobiles for suppliers of automobile equipment, network service providers, and other relevant suppliers in the supply chain for vehicle development.

(4)  
The security controls designed around ports, connection points, or other openings into the vehicle's internal network and operating system.

(5)  
The implementation of security controls to protect critical safety systems in the vehicle from exploitation from any after-market or third-party device and wireless connection brought into, plugged into, or established within the vehicle.

(6)  
The remediation of cybersecurity vulnerabilities.

<paragraph id="H3302512368A949269D5A037BE65BA495"><enum>(7)</enum><text display-inline="yes-display-inline">The use and quality of data forensics to investigate and identify cyber security vulnerabilities in vehicle systems and critical safety systems.</text></paragraph>

<paragraph id="H9DB30D3B60E84DEC8E0DBFF5FC984607"><enum>(8)</enum><text>The coordination of cyber security vulnerability disclosures among vehicle manufacturers and security researchers.</text></paragraph></subsection>

<subsection id="H738831017D5847D1A49CBA72BB40FC21" commented="no"><enum>(d)</enum><header>Annual evaluation</header><text display-inline="yes-display-inline">The Council shall review, and, if necessary, update cybersecurity best practices as the Council considers necessary on an annual basis. If no updates are necessary or approved following such an evaluation, the Administrator shall report such determination in the Federal Register. If the Council determines by a simple majority of all representatives that updates are necessary, the Council shall publish any updates in the Federal Register and on the website maintained by the Administrator that is publicly accessible not later than 90 days after such determination. </text></subsection>

<subsection id="HCD8AA9D0CF234F3B97E4C451CEDD05AA" commented="no"><enum>(e)</enum><header>Submission of plan and review</header>

<paragraph id="HA70561FAB63F47C7B467BD25156C9186" commented="no"><enum>(1)</enum><header>Submission of plan</header>

<subparagraph id="H56F12C5EA4A54E889709A2E167D5B4D0" commented="no"><enum>(A)</enum><header>Vehicle security and integrity plan</header><text display-inline="yes-display-inline">Not later than 90 days after the date on which the best practices approved by the Council pursuant to subsection (c) or (d) are published in the Federal Register, each manufacturer of automobiles may file a vehicle security and integrity plan with the Administrator describing the policies and procedures the manufacturer uses to implement and maintain such best practices. Such plan, including any modification of such plan, may not be disclosed to the public and is specifically exempted from disclosure as described under section 552(b)(3) of title 5. </text></subparagraph>

<subparagraph id="H51E605F0D822402FA10417D9C1D63122" commented="no"><enum>(B)</enum><header>Modification of plan</header><text display-inline="yes-display-inline">Not later than 90 days after a manufacturer modifies the plan described in subparagraph (A), the manufacturer may file an updated plan with the Administrator.</text></subparagraph> </paragraph>

<paragraph id="HB6E0582B3D4742A584B5FD236FF5C7AE" commented="no"><enum>(2)</enum><header>Review</header>

<subparagraph id="HD792034FB9E64B4CA6AC0B86E68A23D7" commented="no"><enum>(A)</enum><header>Review of submission</header><text display-inline="yes-display-inline">Not later than 30 days after the submission of a plan pursuant to paragraph (1), the Administrator shall determine whether the plan complies with the best practices approved pursuant to subsection (c) or (d) and, if necessary, order necessary modification to the plan to comply with such best practices. The Administrator shall determine that the plan complies with the best practices unless the Administrator demonstrates by clear and convincing evidence in the order issued under subparagraph (B) that the plan of the manufacturer is not consistent with the best practices. </text> </subparagraph>

<subparagraph id="H5851B7002D0F463FA6B04E0E429F657A"  
commented="no"><enum>(B)</enum><header>Order for modification</header><text>If upon  
review, the Administrator determines that the plan of a manufacturer is not consistent  
with the best practices approved pursuant to subsection (c) or (d), the Administrator  
shall issue an order to the manufacturer and the manufacturer shall modify the plan in  
accordance with the order. A manufacturer shall have 30 days to submit a modified plan  
in accordance with such order. The Administrator may not prescribe specific action that  
a manufacturer must take to comply with such best  
practices.</text></subparagraph></paragraph></subsection>

<subsection id="H149B429E7800432FA5D1C21CF8891162"  
commented="no"><enum>(f)</enum><header>Enforcement</header>  
<paragraph id="H5EBF6354925242DCB57B5E90A72F031D"  
commented="no"><enum>(1)</enum><header>Violation of plan</header><text display-  
inline="yes-display-inline">A manufacturer that violates the vehicle security and  
integrity plan described in subsection (e) (1) of such manufacturer is subject to the  
civil penalties described in section 30165(a) (1).</text> </paragraph>  
<paragraph id="HA8C10A50F4CC4BB08C686F9B6F04A6CC"  
commented="no"><enum>(2)</enum><header>Liability protection</header><text display-  
inline="yes-display-inline">A manufacturer is not subject to civil penalties described  
in section 30165(a) (1) with regard to a violation of the vehicle security and integrity  
plan of such manufacturer if the manufacturerâ€</text>  
<subparagraph id="H3516DB092242490098343451031712BA"  
commented="no"><enum>(A)</enum><text display-inline="yes-display-inline">submits such a  
vehicle security and integrity plan described in subsection (e) (1) that is approved by  
the Administrator; and</text></subparagraph>  
<subparagraph id="HEE5A010058534FCCB7F3E2CE4A4A8C7B"  
commented="no"><enum>(B)</enum><text>implements and maintains the best practices  
identified in the plan.</text></subparagraph></paragraph>  
<paragraph id="H50B73634DB9446549055FAC718850196"><enum>(3)</enum><header>No Liability  
on the Basis of Cybersecurity Best Practices Issued by the Council </header><text  
display-inline="yes-display-inline">The best practices issued by the Council under this  
section may not provide a basis for or evidence of liability in an action against a  
manufacturer of automobiles whose cyber security practices are alleged to be  
inconsistent with the best practices issued by the Council ifâ€</text>  
<subparagraph id="HB86D2A2FA0B940CF82FB5928EDE4577C"><enum>(A)</enum><text>the  
manufacturer has not filed a vehicle security and integrity plan under subsection  
(e) (1); or</text></subparagraph>  
<subparagraph id="HEAEDD0908B1040F7A7426E7AC752F54B"><enum>(B)</enum><text>the plan of  
the manufacturer does not include the cyber security practice at issue.</text>  
</subparagraph></paragraph></subsection>  
<subsection id="H0894A8EBA1CA446D92CD25E2016C0F38"  
commented="no"><enum>(g)</enum><header>Safe harbor</header><text>A manufacturer that  
submits a vehicle security and integrity plan in accordance with subsection (e) (1)  
shall not be subject to the provisions of section 5 of the Federal Trade Commission Act  
(15 U.S.C. 45) with respect to any unfair or deceptive act or practice relating to the  
best practices the manufacturer implements and maintains under such  
plan.</text></subsection>  
<subsection id="H91AC1D647BC040C3BA5433CA53E7A6A5"

commented="no"><enum>(h)</enum><header>Definitions</header><text>The terms <term>automobile</term> and <quote>manufacturer</quote> have the meanings given those terms in section 32901(a).</text></subsection> </section></chapter><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H5010F79B8286401BB8997219C9127254" commented="no"><enum>(b)</enum><header>Clerical amendment</header><text>The analysis for subtitle VI of title 49, United States Code, is amended by inserting after the item relating to chapter 305 the following:</text>

<quoted-block style="USC" id="H089C362AA33A48C6B9118D3458D2EDCF" display-inline="no-display-inline">

<toc regeneration="no-regeneration">

<multi-column-toc-entry level="section"><toc-enum>307.</toc-enum><level-header level="section">Cybersecurity</level-header><target>30701</target></multi-column-toc-entry></toc><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H7B566C663DAC45148F41580E11F27841" commented="no"><enum>(c)</enum><header>Technical and conforming civil penalty amendment</header><text display-inline="yes-display-inline">Section 30165(a)(1) of title 49, United States Code, is amended by inserting <quote>30701,</quote> after <quote>30147,</quote>.</text> </subsection></section> </title>

<title id="H34E80C6E47A3486F9477D2D727E1C36B"><enum>IV</enum><header>Safety standards, guidelines, evaluations, and new requirements</header>

<section id="HFA9D5856E97A4D889DA6A8C8D5681F3D" section-type="subsequent-section"><enum>401.</enum><header>NHTSA report on seat belts for school buses</header>

<subsection id="H2A1ED8C376194005B4660B8306C1C141"><enum>(a)</enum><header>Study</header><text display-inline="yes-display-inline">The Administrator of the National Highway Traffic Safety Administration shall identify and publish a report evaluating seat belts, advanced automotive technologies, and connected vehicle technologies for school buses (with a gross vehicle weight rating of more than 10,000 pounds that meet all required motor vehicle safety standards) toâ€</text>

<paragraph id="HDA173B74CB5C4E2CAAD2EB20D191895F"><enum>(1)</enum><text display-inline="yes-display-inline">determine the advanced automotive technologies and connected vehicle technologies for motor vehicles that have the largest potential to impact school bus safety;</text></paragraph>

<paragraph id="HCCC7C6E994DA4CACBD19F841DC9161A7"><enum>(2)</enum><text display-inline="yes-display-inline">evaluate the potential costs and potential safety benefits of installing various seat belt systems in school buses; and</text></paragraph>

<paragraph id="H1A863C9C214D440CB5E72B1936D56EF0"><enum>(3)</enum><text>identify the system that is least expensive to install and would not impede the capacity of such school buses that are less than 10 years old.</text></paragraph></subsection>

<subsection id="H91A151DF50374C1482E6C31EAEC9FF19"><enum>(b)</enum><header>Report</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to Congress a report on the findings of the study required by subsection (a), including any recommendations to improve public awareness of safety measures relating to school buses. </text> </subsection></section>

<section commented="no" id="H71E65AFCD13B4047984EC513551901CB" section-type="subsequent-section"><enum>402.</enum><header>Rulemaking on rear seat

crashworthiness</header>

<subsection commented="no"  
id="H1049052AA6BB47A8B69721F381AADAAB"><enum>(a)</enum><header>Safety research  
initiative</header><text display-inline="yes-display-inline">Not later than 2 years  
after the date of enactment of this Act, the Secretary of Transportation shall complete  
research into the development of safety standards or performance requirements for the  
crashworthiness and survivability for passengers in the rear seats of motor  
vehicles.</text> </subsection>

<subsection commented="no"  
id="HA460E2B4408B4DE790742E6069F48821"><enum>(b)</enum><header>Specifications</header><  
text display-inline="yes-display-inline">In carrying out subsection (a), the Secretary  
shall consider side- and rear-impact collision testing, additional airbags, head  
restraints, seatbelt fit, seatbelt airbags, belt anchor location, and any other factors  
the Secretary considers appropriate.</text> </subsection>

<subsection commented="no"  
id="H14B1DF3F61394EB38DE58660D42D888D"><enum>(c)</enum><header>Rulemaking or  
report</header>

<paragraph commented="no"  
id="H4589AE2BEA3B49448D3D2BDB3A91CE78"><enum>(1)</enum><header>Rulemaking</header><text  
display-inline="yes-display-inline">Not later than 1 year after the completion of each  
research and testing initiative required under subsection (a), the Secretary shall  
initiate a rulemaking proceeding to issue a Federal motor vehicle safety standard if  
the Secretary determines that such a standard meets the requirements and considerations  
set forth in subsections (a) and (b) of section 30111 of title 49, United States  
Code.</text> </paragraph>

<paragraph commented="no"  
id="HB822F85428CD4D339C61129B6F89A847"><enum>(2)</enum><header>Report</header><text  
display-inline="yes-display-inline">If the Secretary determines that the standard  
described in paragraph (1) does not meet the requirements and considerations set forth  
in such subsections, the Secretary shall submit a report describing the reasons for not  
prescribing such a standard to the Committee on Energy and Commerce of the House of  
Representatives and the Committee on Commerce, Science, and Transportation of the  
Senate.</text> </paragraph></subsection></section>

<section display-inline="no-display-inline" id="H7B937F7712D849FC82B5E05DB461FABE"  
section-type="subsequent-section"><enum>403.</enum><header>Retention of safety records  
by manufacturers</header>

<subsection  
id="H25DE2C21EEAA48D08CB4C38DEB48CB25"><enum>(a)</enum><header>Rule</header><text  
display-inline="yes-display-inline">Not later than 18 months after the date of  
enactment of this Act, the Secretary of Transportation shall issue a final rule  
pursuant to section 30117 of title 49, United States Code, requiring each manufacturer  
of motor vehicles or motor vehicle equipment to retain all motor vehicle safety  
records, including documents, reports, correspondence, or other materials that contain  
information concerning malfunctions that may be related to motor vehicle safety  
(including any failure or malfunction beyond normal deterioration in use, or any  
failure of performance, or any flaw or unintended deviation from design specifications,  
that could in any reasonably foreseeable manner be a causative factor in, or aggravate,  
an accident or an injury to a person), for a period of not less than 10 calendar years

from the date on which they were generated or acquired by the manufacturer. Such requirement shall also apply to all underlying records on which information reported to the Secretary under part 579 of title 49, Code of Federal Regulations, is based.</text></subsection>

<subsection

id="H48B44F4396F84F7C9696A6B0A769C907"><enum>(b)</enum><header>Application</header><text display-inline="yes-display-inline">The rule required by subsection (a) shall apply with respect to any record described in such subsection that is in the possession of a manufacturer on the effective date of such rule.</text> </subsection></section>

<section id="H49995483976B47019BD8EBA165F9BB99" section-type="subsequent-section"><enum>404.</enum><header>Nonapplication of prohibitions relating to noncomplying motor vehicles to vehicles used for testing or evaluation</header><text display-inline="no-display-inline">Section 30112(b) of title 49, United States Code, is amendedâ€"</text>

<paragraph id="HAE28FEEFF4714553806ABB23E1E470DB"><enum>(1)</enum><text>in paragraph (8), by striking <quote>; or</quote> and inserting a semicolon;</text></paragraph>

<paragraph id="HFC3CEA2C7A154916B66D6CA45F746358"><enum>(2)</enum><text>in paragraph (9), by striking the period at the end and inserting <quote>; or</quote>; and</text></paragraph>

<paragraph id="H20D152C477574A59AD97B7A061352F5C"><enum>(3)</enum><text>by adding at the end the following new paragraph:</text>

<quoted-block style="USC" id="H81634522C7AC4696865A4E4EFFFFA0FC2" display-inline="no-display-inline">

<paragraph id="H88840B4ED9274148AFC7253A3F9E5235"><enum>(10)</enum><text display-inline="yes-display-inline">the introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by a manufacturer that prior to the date of enactment of this paragraphâ€"</text>

<subparagraph id="HEF02F8F1669C4FDA8386D0055E842A85"><enum>(A)</enum><text>has manufactured and distributed motor vehicles into the United States that are certified to comply with all applicable Federal motor vehicle safety standards;</text></subparagraph>

<subparagraph id="H65308E6491AA437E8602008AA208F9D6"><enum>(B)</enum><text>has submitted to the Secretary appropriate manufacturer identification information under part 566 of title 49, Code of Federal Regulations;</text></subparagraph>

<subparagraph id="HD4C81EC09D7A4A10A242E26E559AABE9"><enum>(C)</enum><text>if applicable, has identified an agent for service of process in accordance with part 551 of such title; and</text></subparagraph>

<subparagraph id="H1789DA91AE1F49AA80C8F1F4C33BF953" commented="no"><enum>(D)</enum><text>agrees not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation.</text></subparagraph></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section>

<section id="HFA9BC4FD04AC4F78A7755AD4630D2B73"><enum>405.</enum><header>Treatment of low-volume manufacturers</header>

<subsection id="HF83F6B92D1564BE79A4CBE1299ED1D13"><enum>(a)</enum><header>Exemption from vehicle safety standards for low-volume manufacturers</header><text>Section 30114 of title 49, United States Code, is amendedâ€"</text>

<paragraph id="HE3DEF35E90A14FD3AE6673AED697EEA2"><enum>(1)</enum><text>by striking

<quote>The</quote> and inserting <quote>(a) <header-in-text level="subsection" style="OLC">Vehicles Used for Particular Purposes</header-in-text>.â€"The</quote>; and</text></paragraph>

<paragraph id="H711986351654402E8974EC64D66FC7F3"><enum>(2)</enum><text>by adding at the end the following new subsection:</text>

<quoted-block id="HFF7161BFE0BF4087870575FFD374C237" style="OLC">

<subsection id="HD5D78721699B432CAC3BCBCF121F8DA9"><enum>(b)</enum><header>Exemption for low-volume manufacturers</header>

<paragraph id="H7911476E6E234FC78791F2C195520405"><enum>(1)</enum><header>In general</header><text>The Secretary shallâ€"</text>

<subparagraph id="HB4DCA4A648384CC682D893B35C130238"><enum>(A)</enum><text>exempt from section 30112(a) of this title not more than 500 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer; and</text></subparagraph>

<subparagraph id="H8F189BC6C96F4432BB14ED33B198B8DF"><enum>(B)</enum><text>except as provided in paragraph (4) of this subsection, limit any such exemption to the Federal Motor Vehicle Safety Standards applicable to motor vehicles and not motor vehicle equipment.</text></subparagraph></paragraph>

<paragraph id="H70A5F48978BB4273861B313866254685"><enum>(2)</enum><header>Registration requirement</header><text>To qualify for an exemption under paragraph (1), a low-volume manufacturer shall register with the Secretary at such time, in such manner, and under such terms that the Secretary determines appropriate. The Secretary shall establish terms that ensure that no person may register as a low-volume manufacturer if the person is registered as an importer under section 30141 of this title.</text></paragraph>

<paragraph id="H4FE2EF6CC31B49B78BCF3CFB6445B8EE"><enum>(3)</enum><header>Permanent label requirement</header>

<subparagraph id="H78C61FF8BA4A45A2A25898DA77FBD8CA"><enum>(A)</enum><header>In general</header><text>The Secretary shall require a low-volume manufacturer to affix a permanent label to a motor vehicle exempted under paragraph (1) that identifies the specified standards and regulations for which such vehicle is exempt from section 30112(a) and designates the model year such vehicle replicates.</text></subparagraph>

<subparagraph id="HFA58FC29EFEB405597AFF25E544ED3F4"><enum>(B)</enum><header>Written notice</header><text>The Secretary may require a low-volume manufacturer of a motor vehicle exempted under paragraph (1) to deliver written notice of the exemption toâ€"</text>

<clause id="H4824652DE9EC4EC0A5AEE49EB16D24C4"><enum>(i)</enum><text>the dealer; and</text></clause>

<clause id="H5533693325B64F1D97651229AFD19F61"><enum>(ii)</enum><text>the first purchaser of the motor vehicle, if the first purchaser is not an individual that purchases the motor vehicle for resale.</text></clause></subparagraph>

<subparagraph id="HDE91462A9280426ABB14799AAC104542"><enum>(C)</enum><header>Reporting requirement</header><text>A low-volume manufacturer shall annually submit a report to the Secretary including the number and description of the motor vehicles exempted under paragraph (1) and a list of the exemptions described on the label affixed under subparagraph (A).</text></subparagraph></paragraph>

<paragraph id="HD0B7CCE1B2CD406CB5EC9FA75863AE9B"><enum>(4)</enum><header>Effect on other provisions</header><text>Any motor vehicle exempted under this subsection shall also be exempted from sections 32304, 32502, and 32902 of this title and from section 3

of the Automobile Information Disclosure Act (15 U.S.C. 1232).

**(5) Limitation and public notice**

The Secretary shall have 60 days to review and approve a registration submitted under paragraph (2). Any registration not approved or denied within 60 days after submission shall be deemed approved. The Secretary shall have the authority to revoke an existing registration based on a failure to comply with requirements set forth in this subsection. The registrant shall be provided a reasonable opportunity to correct all deficiencies, if such are correctable based on the sole discretion of the Secretary. An exemption granted by the Secretary to a low-volume manufacturer under this subsection may not be transferred to any other person, and shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the low-volume manufacturer to vehicles built during that calendar year. The Secretary shall maintain an up-to-date list of registrants on an annual basis and publish such list in the Federal Register or on a website operated by the Secretary.

**(6) Limitation of liability for original manufacturers, licensors or owners of product configuration, trade dress, or design patents**

The original manufacturer, its successor or assignee, or current owner, who grants a license or otherwise transfers rights to a low-volume manufacturer shall incur no liability to any person or entity under Federal or State statute, regulation, local ordinance, or under any Federal or State common law for such license or assignment to a low-volume manufacturer.

**(7) Definitions**

In this subsection:

**(A) Low-volume manufacturer**

The term **low-volume manufacturer** means a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of this title, whose annual worldwide production is not more than 5,000 motor vehicles.

**(B) Replica motor vehicle**

The term **replica motor vehicle** means a motor vehicle produced by a low-volume manufacturer and that

**(i)** is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and

**(ii)** is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

**(b) Vehicle emission compliance standards for low-volume motor vehicle manufacturers**

Part A of title II of the Clean Air Act (42 U.S.C. 7521 et

seq.) is amendedâ€

<paragraph id="H13300552C8D04565967ED446BB1DE769"><enum>(1)</enum><text>in section 206(a) by adding at the end the following new paragraph:</text>

<quoted-block id="H74B3C2C7527E4B81AF59263480E4BB0A" style="OLC">

<paragraph id="H31F5909C3648465DA67CE35F1624EF2D" indent="up1"><enum>(5)</enum>

<subparagraph id="H7D87E4618C364490BCA5F6B761926701" display-inline="yes-display-inline"><enum>(A)</enum><text display-inline="yes-display-inline">A motor vehicle engine (including all engine emission controls) from a motor vehicle that has been granted a certificate of conformity by the Administrator for the model year in which the motor vehicle is assembled, or a motor vehicle engine that has been granted an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the motor vehicle is assembled, may be installed in an exempted specially produced motor vehicle, ifâ€

<clause id="H310913BBBB7A45B0841DD7441A0386F4" indent="up1"><enum>(i)</enum><text>the manufacturer of the engine supplies written instructions explaining how to install the engine and maintain functionality of the engineâ€™s emission control system and the on-board diagnostic system (commonly known as <quote>OBD II</quote>), except with respect to evaporative emissions diagnostics;</text></clause>

<clause id="HC56B928E838840019CCDBA706836AFE5" indent="up1"><enum>(ii)</enum><text display-inline="yes-display-inline">the manufacturer of the exempted specially produced motor vehicle installs the engine in accordance with such instructions; and</text></clause>

<clause id="H9FC82E84F1AD4575B8EEA79DDA14415A" indent="up1"><enum>(iii)</enum><text>the installation instructions include emission control warranty information from the engine manufacturer in compliance with section 207, including where warranty repairs can be made, emission control labels to be affixed to the vehicle, and the certificate of conformity number for the applicable vehicle in which the engine was originally intended or the applicable Executive order number for the engine.</text></clause></subparagraph>

<subparagraph id="H3E78751F981C441288E485835898202E" indent="up1"><enum>(B)</enum><text>A motor vehicle containing an engine compliant with the requirements of subparagraph (A) shall be treated as meeting the requirements of section 202 applicable to new vehicles manufactured or imported in the model year in which the exempted specially produced motor vehicle is assembled.</text></subparagraph>

<subparagraph id="H3A0D2697D0E24CF48929F97B64324B47" indent="up1"><enum>(C)</enum><text>Engine installations that are not performed in accordance with installation instructions provided by the manufacturer and alterations to the engine not in accordance with the installation instructions shallâ€

<clause id="H2A95239476A44E18A89500B3E78E231C"><enum>(i)</enum><text>be treated as prohibited acts by the installer under section 203; and</text></clause>

<clause id="HDD8CD4AC6D8645ECB0CF71ABCE09FF5B"><enum>(ii)</enum><text>subject to civil penalties under the first and third sentences of section 205(a), civil actions under section 205(b), and administrative assessment of penalties under section 205(c).</text></clause></subparagraph>

<subparagraph id="H1E2580C535954CF19614D3DAE6F0E6FD" indent="up1"><enum>(D)</enum><text display-inline="yes-display-inline">The manufacturer of an exempted specially produced motor vehicle that has an engine compliant with the requirements of subparagraph (A)

shall provide to the purchaser of such vehicle all information received by the manufacturer from the engine manufacturer, including information regarding emissions warranties from the engine manufacturer and all emissions-related recalls by the engine manufacturer.

**(E)** To qualify to install an engine under this paragraph, a manufacturer of exempted specially produced motor vehicles shall register with the Administrator at such time and in such manner as the Administrator determines appropriate. The manufacturer shall submit an annual report to the Administrator that includes

(i) a description of the exempted specially produced motor vehicles and engines installed in such vehicles; and

(ii) the certificate of conformity number issued to the motor vehicle in which the engine was originally intended or the applicable Executive order number for the engine.

**(F)** Exempted specially produced motor vehicles compliant with this paragraph shall be exempted from

(i) motor vehicle certification testing under this section; and

(ii) vehicle emission control inspection and maintenance programs required under section 110.

**(G)** A person engaged in the manufacturing or assembling of exempted specially produced motor vehicles shall not be treated as a manufacturer for purposes of this Act by virtue of such manufacturing or assembling, so long as such person complies with subparagraphs (A) through

(E).

**(2)** in section 216 by adding at the end the following new paragraph:

**(12)** Exempted specially produced motor vehicle

The term **exempted specially produced motor vehicle** means a replica motor vehicle that is exempt from specified standards pursuant to section 30114(b) of title 49, United States Code.

**(c)** **Implementation**  
Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation and the Administrator of the Environmental Protection Agency shall issue such regulations as may be necessary to implement the amendments made by subsections (a) and (b), respectively.

**(16)** **Subsequent**

section"><enum>406.</enum><header>No liability on the basis of NHTSA motor vehicle safety guidelines</header><text display-inline="no-display-inline">Section 30111 of title 49, United States Code, is amended by adding at the end the following new subsection:</text>

<quoted-block style="USC" id="HD60363B2D3564BE592BA13DABC25A512" display-inline="no-display-inline">

<subsection id="H9486834B8BA04A18942523454E7A62A9"><enum>(f)</enum><header>No liability on the basis of motor vehicle safety guidelines issued by the Secretary</header>

<paragraph id="HE22469FFF2124CB8B9C0F5DD1CA51E5D" display-inline="yes-display-inline"><enum>(1)</enum><text>No guidelines issued by the Secretary with respect to motor vehicle safety shall provide a basis for or evidence of liability in any action against a defendant whose practices are alleged to be inconsistent with such guidelines. A person who is subject to any such guidelines may use an alternative approach to that set forth in such guidelines that complies with any requirement in a provision of this subtitle, a motor vehicle safety standard issued under this subtitle, or another relevant statute or regulation.</text></paragraph>

<paragraph id="HE9F5BCB7DA3E48E38EAD126F57773CD1" display-inline="no-display-inline" indent="up1"><enum>(2)</enum><text>No such guidelines shall confer any rights on any person nor shall operate to bind the Secretary or any person who is subject to such guidelines to the approach recommended in such guidelines. In any enforcement action with respect to motor vehicle safety, the Secretary must prove a violation of a provision of this subtitle, a motor vehicle safety standard issued under this subtitle, or another relevant statute or regulation. The Secretary may not build a case against or negotiate a consent order with any person based in whole or in part on practices of the person that are alleged to be inconsistent with any such guidelines.</text></paragraph>

<paragraph id="H95097D5CD11C42F2917FC307D7F239DB" indent="up1"><enum>(3)</enum><text display-inline="yes-display-inline">A defendant may use compliance with any such guidelines as evidence of compliance with the provision of this subtitle, motor vehicle safety standard issued under this subtitle, or other statute or regulation under which such guidelines were developed.</text></paragraph></subsection><after-quoted-block>.</after-quoted-block></quoted-block></section></title>

<title id="H74EFE878B5E44140A4FFB6F7EEA5D624"><enum>V</enum><header>Advanced Automotive Technologies</header>

<section id="H5A544BC391994B95B011F8EEA0F9F3E4" section-type="subsequent-section"><enum>501.</enum><header>Metrics for advanced automotive technologies</header>

<subsection id="HFB8FADC6098A46859356AD6B75D8B9F8"><enum>(a)</enum><header>In general</header><text display-inline="yes-display-inline">Part C of subtitle VI of title 49, United States Code, is amended by inserting after chapter 327 the following new chapter:</text>

<quoted-block style="USC" id="H306FECC85FD043C8AB5E21DBF4B229F6" display-inline="no-display-inline">

<chapter id="H6C7A28ECD2EE4328ABDE4BEEFE3A1318"><enum>328</enum><header>Advanced automotive technologies</header>

<toc container-level="chapter-container" quoted-block="no-quoted-block" lowest-level="section" idref="H6C7A28ECD2EE4328ABDE4BEEFE3A1318" regeneration="yes-regeneration" lowest-bolded-level="division-lowest-bolded">

<toc-entry idref="HB50AD57C29ED492F8F0E58723E7EF82A" level="section">Sec.</toc-entry>  
 <toc-entry level="section">32801. Definitions.</toc-entry>  
 <toc-entry level="section">32802.â€¢Metrics for advanced automotive technologies.</toc-entry> </toc>  
 <section  
 id="HD5CE1BF4A0054DCE89FE3976DD7AB8E3"><enum>32801.</enum><header>Definitions</header><text display-inline="no-display-inline">In this chapter:</text>  
 <paragraph id="HD36FD5255EE440068546226D75BAE60E"><enum>(1)</enum><header>Advanced automotive technology; connected vehicle technology</header><text display-inline="yes-display-inline">The terms <quote>advanced automotive technology</quote> and <quote>connected vehicle technology</quote> have the meanings given those terms in section 32920.</text></paragraph>  
 <paragraph id="HDEAEC920C44F417A90D10868710BBBB9"><enum>(2)</enum><header>Manufacturer; motor vehicle</header><text>The terms <quote>manufacturer</quote> and <quote>motor vehicle</quote> have the meanings given those terms in section 30102.</text></paragraph></section>  
 <section id="HB50AD57C29ED492F8F0E58723E7EF82A"><enum>32802.</enum><header>Metrics for advanced automotive technologies</header>  
 <subsection id="H8462BE8AAC524BB19DC9A56525929BF6"><enum>(a)</enum><header>Advanced Automotive Technology Advisory Committee</header>  
 <paragraph id="HC4A283CF565E46BE928CDD67FF51E8D9"><enum>(1)</enum><header>Establishment</header><text display-inline="yes-display-inline">Not later than 1 year after the date of enactment of this chapter, the Secretary of Transportation shall establish an Advanced Automotive Technology Advisory Committee (in this chapter referred to as the <quote>Committee</quote>) to develop safety performance metrics for advanced automotive technologies and connected vehicle technologies originally installed in motor vehicles.</text> </paragraph>  
 <paragraph id="H29C33FA959B04DA8BF5402015C99FFFF"><enum>(2)</enum><header>Notice of intent</header><text>Not later than 30 days after the date of enactment of this chapter, the Secretary shall issue a notice of intent to open a proceeding establishing the Committee. This notice shall be published in the Federal Register and on a website maintained by the Secretary. </text></paragraph>  
 <paragraph id="HE5EE5D7BEF214B5D9ABA81E66800A15D"><enum>(3)</enum><header>Proceeding and appointment of members</header><text>Not later than 60 days after the notice of intent is published pursuant to paragraph (2), the Secretary shall formally open a proceeding to establish the Committee and appoint members of the Committee as set forth in paragraph (4). </text></paragraph>  
 <paragraph id="H7153CB8667F5484690DB4972DD85DDDE"><enum>(4)</enum><header>Membership</header><text>The Committee shall be comprised of the National Highway Traffic Safety Administration and representatives from manufacturers of motor vehicles for sale in the United States, standards setting bodies including the International Organization of Standards and SAE International, and any others as determined by the Secretary.</text></paragraph></subsection>  
 <subsection id="HA17E6AD05704406A9DD55040A3B9B775"><enum>(b)</enum><header>Development of safety performance metrics</header>  
 <paragraph id="H965079CF400847E88107B0B5A9747946"><enum>(1)</enum><header>In

general</header><text>The Committee shall develop safety performance metrics for any advanced automotive technology or connected vehicle technology that is original equipment in at least 15 percent of the motor vehicle fleet for sale in the United States by any manufacturer of motor vehicles. The Secretary shall publish any safety performance metrics developed by the Committee in the Federal Register and otherwise provide public notice of such metrics in such manner as determined by the Secretary.</text></paragraph>

<paragraph id="HB9B70259A2DC4AB9A13B3F1DEAC4EA03"><enum>(2)</enum><header>Test procedures required</header><text display-inline="yes-display-inline">Each safety performance metric developed pursuant to paragraph (1) for an advanced automotive technology or connected vehicle technology shall include a corresponding test procedure developed by the Committee to be utilized to determine if the technology meets the established safety performance metric. Each test procedure shall be made publicly available on a website maintained by the Secretary.</text></paragraph>

<paragraph id="H8CB4818C2B224806A5C4889219D38B21"><enum>(3)</enum><header>Safety rating</header><text display-inline="yes-display-inline">The Secretary shall assign a safety rating under the New Car Assessment Program for each advanced automotive technology or connected vehicle technology that has an established safety performance metric and corresponding test procedure.</text></paragraph></subsection>

<subsection id="H25A990E5F1FA4ED99CB139ABE53119D5"><enum>(c)</enum><header>Label requirements</header>

<paragraph id="HA77D0BFB19BE4047AED0B9D47CB22D2D"><enum>(1)</enum><header>In general</header><text display-inline="yes-display-inline">The safety rating for any advanced automotive technology or connected vehicle technology that has been installed as original equipment in a new motor vehicle shall be added to the label according to label requirements set forth in the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.) if the Secretary determines that at least 35 percent of new motor vehicles marketed and sold in the United States are equipped with the technology as original equipment.</text></paragraph>

<paragraph id="H2C6ED6B5982545C8AF8D820184EF1400"><enum>(2)</enum><header>Motor vehicles that do not contain an advanced automotive technology</header><text display-inline="yes-display-inline">If a new motor vehicle does not have an advanced automotive technology or connected vehicle technology following the determination made by the Secretary in paragraph (1), the manufacturer shall identify on the label described in such paragraph that the vehicle is not equipped with the technology in such manner as determined by the Secretary.</text></paragraph>

<paragraph id="H975FDEE02BEB45ADA93F74BBC00E6DE6"><enum>(3)</enum><header>Advanced automotive technologies that do not have published or released performance metrics, test procedures, or safety ratings</header><text display-inline="yes-display-inline">If an advanced automotive technology or connected vehicle technology that is installed as part of the motor vehicle's original equipment does not have a formally published or released performance metric, test procedure, or safety rating, the Secretary shall require that the technology be listed on the label described in paragraph (1) as a special feature of the motor vehicle until a performance metric, test procedure, and safety rating is developed for the technology and at least 35 percent of all new motor vehicles marketed or sold in the United States are equipped with the technology as original equipment.</text></paragraph>

<paragraph id="HE3388637E5164BD381BAEBCF806A3463"><enum>(4)</enum><header>Removal from

label</header><text>If the Secretary determines that more than 85 percent of new motor vehicles contain a particular advanced automotive technology or connected vehicle technology installed as original equipment, the Secretary may require that the technology safety rating be eliminated from the label described in paragraph (1).</text></paragraph></subsection> </section></chapter><after-quoted-block>.</after-quoted-block></quoted-block></subsection>

<subsection id="H0B4B0224F05A4FDD973DA9612C4A88C9"><enum>(b)</enum><header>Clerical amendment</header><text>The analysis of subtitle VI of title 49, United States Code, is amended by inserting after the item relating to chapter 327 the following:</text>

<quoted-block style="USC" id="H8AFD6B5CDAFC4054AA2650DC3EBCE9CC" display-inline="no-display-inline">

<toc regeneration="no-regeneration">

<multi-column-toc-entry level="section"><toc-enum>328.</toc-enum><level-header level="section">Advanced Automotive Technologies</level-header><target>32801</target></multi-column-toc-entry></toc><after-quoted-block>.</after-quoted-block></quoted-block></subsection></section>

<section id="H304B00A965B44EB09785B2BA17DE3A05" section-type="subsequent-section"><enum>502.</enum><header>Credits for advanced automotive technology</header>

<subsection id="H0F8AED55631D4F9B8BE0F142D25A492E"><enum>(a)</enum><header>In general</header>

<paragraph id="H88DA6CA978804A4D8308D9A0AD0C3218"><enum>(1)</enum><header>Credits</header><text display-inline="yes-display-inline">Section 202(a) of the Clean Air Act (42 U.S.C. 7521(a)) is amended by adding at the end the following:</text>

<quoted-block style="OLC" id="H950E5724E88C473389DE5FE19F7365D0" display-inline="no-display-inline">

<paragraph id="HEC6CFC5A575D4F7B8C17DF7FEE6A20F6"><enum>(7)</enum><header>Credits for advanced automotive technology</header>

<subparagraph id="H8E6C50FD6A914F73A284BE1700177379"><enum>(A)</enum><header>Applicability</header><text>This paragraph applies with respect to any light-duty vehicle, light-duty truck, or medium-duty passenger vehicle that isâ€"</text>

<clause id="HDB471FAF645D47AEB2623E4800A25602"><enum>(i)</enum><text>manufactured after model year 2018; and</text></clause>

<clause id="HB06095953B6E4583841F6C04D2F8CA90"><enum>(ii)</enum><text display-inline="yes-display-inline">equipped with (as original equipment)â€"</text>

<subclause id="H9DF5DFA36D0F4219AF8174F2D75262D5"><enum>(I)</enum><text>at least three advanced automotive technologies; or</text></subclause>

<subclause id="H9FC8977028E54733A369DF728A2DD0F2"><enum>(II)</enum><text>one connected vehicle technology.</text></subclause></clause></subparagraph>

<subparagraph id="HDAD261BCC0BD43209779E44E5CA71478"><enum>(B)</enum><header>Credits</header><text>Any greenhouse gas emissions standards promulgated under paragraph (1) for a light-duty vehicle, light-duty truck, or medium-duty passenger vehicle shall provide a credit ofâ€"</text>

<clause id="HA863CBF790CA4151B5B419DB91295B77"><enum>(i)</enum><text display-inline="yes-display-inline">3 or more grams per mile (as determined by the Administrator) of greenhouse gas emissions for any vehicle described in subparagraph

(A) with at least three advanced automotive technologies installed as original equipment; and</text></clause>

<clause id="H01EA1DCBD2F8488692E530986DF2478A"><enum>(ii)</enum><text display-inline="yes-display-inline">6 or more grams per mile (as determined by the Administrator) of greenhouse gas emissions for any vehicle described in subparagraph (A) with a connected vehicle technology installed as original equipment.</text></clause></subparagraph>

<subparagraph id="H6C0D290A0F4D4F83AFA66FFDAD9A1866"><enum>(C)</enum><header>Limitation</header><text>The Administrator may not take the installation or noninstallation of any advanced automotive technology or connected vehicle technology into account for any purpose other than providing credits pursuant to subparagraph (B).</text></subparagraph>

<subparagraph id="H03DE4B0A235C4B31A7D451EF705540D3"><enum>(D)</enum><header>Periodic review of number of grams per mile</header><text>Not later than the end of calendar year 2026, and biennially thereafter, the Administrator shallâ€"</text>

<clause id="H62C39C701B044F89BB7B86FB65448B5F"><enum>(i)</enum><text>review the number of grams per mile of greenhouse gas emissions being given as credits under clauses (i) and (ii) of subparagraph (B) to determine whether (and if so to what extent) the Administrator will exercise the authority vested by such clauses to change such number; and</text></clause>

<clause id="H50616137AD0147E59FE34B1CB9E77497"><enum>(ii)</enum><text>submit a report to the Congress on the results of such review and determination.</text></clause></subparagraph>

<subparagraph id="H429BDA1A4212407693802C190363C63A"><enum>(E)</enum><header>Definitions</header><text>In this paragraph:</text>

<clause id="HAB02B23F4CDE47B7BE2F99F5058F935C"><enum>(i)</enum><text display-inline="yes-display-inline">The term <quote>advanced automotive technology</quote> has the meaning given to such term in section 32920(a)(1) of title 49, United States Code.</text> </clause>

<clause id="H5C3F7879581B4E4084880D8124C1CBF7"><enum>(ii)</enum><text display-inline="yes-display-inline">The term <quote>connected vehicle technology</quote> has the meaning given to such term in section 32920(a)(2) of title 49, United States Code.</text> </clause>

<clause id="HC35AC1874CF9491C8F14869F72857C3C"><enum>(iii)</enum><text>The term <quote>medium-duty passenger vehicle</quote> means a medium-duty passenger vehicle as such term is used in the final rules entitled <quote>Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles</quote> published in the Federal Register by the Environmental Protection Agency and National Highway Traffic Safety Administration on September 15, 2011 (76 Fed. Reg. 57106) (including any successor regulations).</text></clause></subparagraph></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph>

<paragraph id="H044C73EBEB3E448784CBAE4F83D43E68"><enum>(2)</enum><header>Conforming amendments</header><text>Section 202(a)(6) of the Clean Air Act (42 U.S.C. 7521(a)(6)) is amendedâ€"</text>

<subparagraph id="HFBE846E7561046D0A9E462C6BA374FA8"><enum>(A)</enum><text>by striking <quote>Within 1 year</quote> and inserting the following:</text>

<quoted-block style="OLC" id="HE6B3E0817AAD4443832700B5DC1603DF" display-inline="no-display-inline">

<subparagraph id="H495E16558E4F4E009EB130BFCCD60B6C"><enum>(A)</enum><text display-inline="yes-display-inline">Within 1 year</text></subparagraph><after-quoted-block>; and</after-quoted-block></quoted-block></subparagraph>

<subparagraph id="H2F04AAA068544C81AF699EED40D8EECC"><enum>(B)</enum><text>by striking <quote>The standards shall require</quote> and inserting the following: </text>

<quoted-block style="OLC" id="H02A82B10777D4ABCAAAF830D1A13D30D" display-inline="no-display-inline">

<subparagraph id="HEF201BBB35F643ECBDD5D5547033EAB"><enum>(B)</enum><text display-inline="yes-display-inline">The standards shall require</text></subparagraph><after-quoted-block>.</after-quoted-block></quoted-block></subparagraph></paragraph></subsection>

<subsection id="H036E0C2C1BAC4E338B96D63758979B42"><enum>(b)</enum><header>State standards</header><text display-inline="yes-display-inline">Section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)) is amendedâ€" </text>

<paragraph id="H1E2CE9817312454792E4B27E80FED141"><enum>(1)</enum><text>in paragraph (1)â€" </text>

<subparagraph id="H809FA4C715244A1B9D94A962EB0BBA9A"><enum>(A)</enum><text>in subparagraph (B), by striking <quote>or</quote> at the end;</text></subparagraph>

<subparagraph id="H9696404FA0CA447AAD4ACB736EC71E1B"><enum>(B)</enum><text>in subparagraph (C), by striking the period at the end and inserting <quote>, or</quote>; and</text></subparagraph>

<subparagraph id="HD5367F34AF9A4D28BC2A7CAEA1F41F16"><enum>(C)</enum><text>by adding at the end the following:</text>

<quoted-block style="OLC" id="H7560242DD5A34E00889EE5639435232B" display-inline="no-display-inline">

<subparagraph id="H14B1A6D7966F4F74896AF3339CBBC7D7" indent="up1"><enum>(D)</enum><text display-inline="yes-display-inline">such State is not applying credits to the full extent set forth in section 202(a)(7).</text></subparagraph><after-quoted-block>; and</after-quoted-block></quoted-block></subparagraph></paragraph>

<paragraph id="H3CA9B39EE9CE4C1791C6178436F833AD"><enum>(2)</enum><text>by adding at the end the following:</text>

<quoted-block style="OLC" id="H573400A78A044CA3B6E1F77A36142A4C" display-inline="no-display-inline">

<paragraph id="HC2E7CF308DD84756888CEC0F36B4D773"><enum>(4)</enum><text display-inline="yes-display-inline">If the National Highway Traffic Safety Administration publishes in the Federal Register a safety performance metric for an advanced automotive technology or connected vehicle technology (as such terms are defined in section 202(a)(7)(D)) pursuant to section 32802(b)(1) of title 49, United States Code, while a waiver is in effect with respect to a State under this subsection, and such State does not revise its standard under section 202(a)(1) as described in section 202(a)(7) within 30 days after the safety performance metric is formally published, the waiver for such State under this subsection shall cease to apply.</text></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></subsection></section>

<section id="HCD2D465B36A948379A582978919BBDE8"><enum>503.</enum><header>Fuel economy credits for advanced automotive technologies</header>

<subsection id="HBE70302E00D64338B9335FA23871CE3A"><enum>(a)</enum><header>In general</header><text display-inline="yes-display-inline">Chapter 329 of title 49, United States Code, is amended by adding at the end the following new section:</text><quoted-block style="USC" id="HDF99B0C9612C4A86B91E4B1AEC9FB5AC" display-inline="no-display-inline">

<section id="H45CE6C859B514E54BAD5D977935F9672"><enum>32920.</enum><header>Fuel economy credits for advanced automotive technologies</header>

<subsection id="HB11083A65C7E4E9CB4E0205A31CA75F7"><enum>(a)</enum><header>Definitions</header><text display-inline="yes-display-inline">In this section:</text>

<paragraph id="HBCE93A2688A04FE3956FA9EF2B4C31ED"><enum>(1)</enum><header>Advanced automotive technology</header><text display-inline="yes-display-inline">The term <quote>advanced automotive technology</quote> means any vehicle information system, unit, device, or technology that meets any applicable performance metric and demonstrates crash avoidance or congestion mitigation benefits such as any of the following technologies:</text>

<subparagraph id="HF00732FA565148148F349F0022C9D364"><enum>(A)</enum><text>Forward collision warning.</text></subparagraph>

<subparagraph id="HD33BC9A925F84C43B8F63D21C21DAEBA"><enum>(B)</enum><text>Adaptive brake assist.</text></subparagraph>

<subparagraph id="H29A4ABFED3BA44A293722E3327D7EB8E"><enum>(C)</enum><text>Autonomous emergency braking.</text></subparagraph>

<subparagraph id="H650965401F0A45BBAC9478C0CEDBCB48"><enum>(D)</enum><text>Adaptive cruise control.</text></subparagraph>

<subparagraph id="H490488CDA2274133B49780B2747900CD"><enum>(E)</enum><text>Lane departure warnings.</text></subparagraph>

<subparagraph id="HD72773CBA13A4B5FAF6F37E9E1057516"><enum>(F)</enum><text>Lane keeping assistance.</text></subparagraph>

<subparagraph id="HE215EBF3202C4E7A98DF422DD33B4490"><enum>(G)</enum><text>Driver attention monitor.</text></subparagraph>

<subparagraph id="HF8260CF0109F4671BDEF40ED75C7E941"><enum>(H)</enum><text>Left turn assist.</text></subparagraph>

<subparagraph id="HF276DFD48BCD43609F40DBC45E39E9A1"><enum>(I)</enum><text>Intersection movement assist.</text></subparagraph></paragraph>

<paragraph id="H155E1083F3C341CEA9C5B79468623EA6"><enum>(2)</enum><header>Connected vehicle technology</header><text display-inline="yes-display-inline">The term <quote>connected vehicle technology</quote> means a dedicated short-range communications device that meets applicable performance metrics as defined by the Advanced Automotive Technology Advisory Committee established under section 32802 and operates at 5.9 GHz for the purpose of sending safety messages between motor vehicles.</text></paragraph></subsection>

<subsection id="H7EECDF3986624DD78600779047A13FBD"><enum>(b)</enum><header>Credits for advanced automotive technology</header><text display-inline="yes-display-inline">For any model or models of automobiles manufactured by a manufacturer after model year 2018 and equipped with three or more advanced automotive technologies or one connected vehicle technology as original equipment, the calculation of the average fuel economy for all categories of automobiles encompassing such model or models shall be adjusted in accordance with the methodology set forth in section 600.510â€"12 of title 40, Code

of Federal Regulations, so as to provide fuel economy credits for advanced automotive technology and connected vehicle technology with a formally published safety metric that are equivalent to the carbon-related exhaust emission credits set forth in section 202(a)(7) of the Clean Air Act (42 U.S.C. 7521(a)(7)).

**Authority to add additional advanced automotive technologies and to determine the appropriate level of credits for such technologies** Any interested person may petition the Secretary of Transportation to promulgate a rule adding an advanced automotive technology to the definition set forth in subsection (a)(1). If the Secretary promulgates such a rule, the Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, determine the appropriate level of greenhouse gas credits and fuel economy credits necessary to incentivize the implementation of the additional advanced automotive technology. The Secretary shall ensure that the calculations referenced in subsection (b) shall provide an equivalent amount of fuel economy credit for the added advanced automotive technology. The Secretary shall determine the appropriate fuel economy credit for any such additional advanced automotive technology based on the relative contribution of any such additional advanced automotive technology to crash avoidance or congestion mitigation.

**Periodic review** Not later than the end of calendar year 2026, and biennially thereafter, the Secretary shall—

(1) in coordination with the Administrator of the Environmental Protection Agency, review the methodology for providing fuel economy credits for advanced automotive technology and connected vehicle technology under subsection (b) that are equivalent to the carbon-related exhaust emission credits set forth in section 202(a)(7) of the Clean Air Act and make determinations on and adjustments to such credits accordingly; and

(2) submit to Congress a report on the results of such review, determinations, and adjustments.

**Conforming amendment** Section 32902(h)(3) of title 49, United States Code, is amended by inserting before the period at the end the following: *or credits under section 32920*.

**Clerical amendment** The table of sections for chapter 329 of title 49, United States Code, is amended by adding at the end the following:

USC
HDB2FB272145145F5BEEA841BDF1E3FD5
no-display-inline

no-regeneration

32920. Fuel economy credits for advanced automotive technologies.

Message

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**From:** Olsen, Elizabeth (EPW) [Elizabeth\_Olsen@epw.senate.gov]  
**Sent:** 5/12/2015 3:38:52 PM  
**To:** Mccarthy, Gina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=51ee957b10cb49a0b2ff98174ae44a46-Mccarthy, Regina]  
**CC:** Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fd3eb96e8b78-Distefano,]  
**Subject:** Senate EPW Committee: Responses to Feb. 4, 2015 WOTUS Hearing Overdue  
**Attachments:** ALL QFRs McCarthy 02.04.15 Environment and Public Works WOTUS Hearing.pdf; mccarthy formal letter qfr.pdf  
**Importance:** High

Dear Administrator McCarthy:

This is Elizabeth Olsen with the EPW Committee. I am once again messaging you to check on the status of your responses to the follow up questions from the **February 4, 2015** EPW Committee WOTUS hearing. These were **due on March 10, 2015**. Please e-mail a copy of your responses to [Elizabeth\\_Olsen@epw.senate.gov](mailto:Elizabeth_Olsen@epw.senate.gov) or deliver one hard copy **as soon as possible**.

If you have any questions about the requests or have already submitted them, please feel free to contact me.

Thank you,

Elizabeth "Lizzy" Olsen, J.D.  
Majority Director of Operations  
Senate Committee on Environment and Public Works  
C: (202) 407-3841  
O: (202)224-6176

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 9/29/2015 4:21:30 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** FW: Sen. Markey TA Request on Mercury  
**Attachments:** RTC Compounds\_Table.pdf

See below and attached technical assistance. Let me know if questions.

The attached table from the Report to Congress (pp. xiv and xv) responds to the question. All compounds in table are used outside of the mining sector; the red circles indicate use in mining and other sectors. The source sectors (column 2) and purposes and uses (column 4) are also listed.

EPA's 2009 Report to Congress on mercury compounds identified the industry sectors, uses, and quantities for 12 mercury compounds made/used/exported in sectors other than mining. The main sectors are chemical manufacturing, air pollution control, and waste treatment. None of the compounds was used only in the mining sector, although nearly all mercury (I) chloride is generated by mines or smelters.

Report: <http://www.epa.gov/mercury/pdfs/mercury-rpt-to-congress.pdf>

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Tuesday, September 29, 2015 11:17 AM  
**To:** Vaught, Laura  
**Subject:** TA request

Laura

Section 12(c)(3) of TSCA required EPA to do a study on Hg compounds that could be used for the regeneration of elemental mercury. I'm pasting a list of some of the compounds below. The nature of the report that was required seems to suggest that EPA may already know generally who uses/makes/exports these compounds outside the mining sector – that is what I'm looking to figure out.

Thanks  
Michal

- “(i) Mercury (I) chloride or calomel.
- “(ii) Mercury (II) oxide.
- “(iii) Mercury (II) sulfate.
- “(iv) Mercury (II) nitrate.
- “(v) Cinnabar or mercury sulphide.
- “(vi) Any mercury compound that the Administrator, at the discretion of the Administrator, adds to the list by rule, on determining that exporting that mercury compound for the purpose of regenerating elemental mercury is technically feasible.

In existing TSCA

c) PROHIBITION ON EXPORT OF ELEMENTAL MERCURY.—

(1) **PROHIBITION.**—Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) **INAPPLICABILITY OF SUBSECTION (a).**—Subsection (a) shall not apply to this subsection.

(3) **REPORT TO CONGRESS ON MERCURY COMPOUNDS.**—

(A) **REPORT.**—Not later than one year after the date of enactment of the Mercury Export Ban Act of 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products

or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) **PROCEDURE.**—For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this title, including sections 10 and 11.

(4) **ESSENTIAL USE EXEMPTION.**—(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

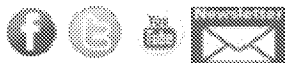
(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 15, and shall be subject to penalties under section 16, injunctive relief under section 17, and citizen suits under section 20.

(5) **CONSISTENCY WITH TRADE OBLIGATIONS.**—Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) **EXPORT OF COAL.**—Nothing in this subsection shall be construed to prohibit the export of coal.

Michal Ilana Freedhoff, Ph.D.  
Director of Oversight & Investigations  
Office of Senator Edward J. Markey  
255 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-2742

Connect with Senator Markey



October 14, 2009

U.S. Environmental Protection Agency

**Table ES-1: Summary of Information on Mercury Compounds Required in the Mercury Export Ban Act of 2008**

Table ES-1: Summary of Information on Mercury Compounds Required in the Mercury Export Ban Act of 2008									
Compound Name	Produced in U.S.		Imported		Purposes and Uses	Quantity used annually in U.S.	Quantity used 2010 & after	Sources and quantities exported in last three years (2006, 2007, 2008)	Potential for export for regeneration of elemental mercury
	Source Sector	Quantity in 2004 (kg)	Source	Quantity (annual)					
Mercury(I) chloride	Air pollution byproduct at mines	~25,000Hg			1. Processed for elemental mercury regeneration				Likely
	Chemical manufacturing	1.3			2. Calomel (mercury(I) chloride) electrodes				Unlikely
Mercury(II) nitrate	Chemical manufacturing	88.7			1. Preparation of other mercuric products				somewhat likely
					2. Analytic reagent (test kits)				
Mercury(II) oxide	Chemical manufacturing; Battery recycling	32.5			1. Batteries				somewhat likely
					2. Synthesis of other mercury compounds				
					3. Analytical reagent				
Mercury(II) sulfate	Chemical manufacturing; Waste treatment	260.8 (amount from waste treatment unknown)			1. Gold and silver extraction				somewhat likely
					2. Reagent				
Mercury(II) sulfide	Naturally occurring; Chemical manufacturing; Waste treatment	0.6 (amount from waste treatment unknown)			1. Extraction of elemental mercury				somewhat - Unlikely
					2. Pigment				
Mercury(II) acetate	Chemical manufacturing	41.3			1. Manufacture of organomercuric compounds				Unlikely
					2. Catalyst or reagent				

MINING  
OTHERSMINING  
OTHERS

October 14, 2009

U.S. Environmental Protection Agency

Table ES-1: Summary of Information on Mercury Compounds Required in the Mercury Export Ban Act of 2008

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Compound Name	Produced in U.S.		Imported		Purposes and Uses	Quantity used annually in U.S.	Quantity used 2010 & after	Sources and quantities exported in last three years (2006, 2007, 2008)	Potential for export for regeneration of elemental mercury
	Source Sector	Quantity in 2004 (kg)	Source	Quantity (annual)					
Mercury(II) chloride	Chemical manufacturing	76.8	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Catalyst or reagent 2. Mercury capture waste procedures	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Unlikely
Mercury(II) iodide	Chemical manufacturing	11.3	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Mayer's or Nessler's reagent 2. Nuclear particle detection instruments	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Unlikely
Phenyl mercury(II) acetate	Chemical manufacturing	0.2	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Preservative 2. Preparation of other phenylmercury compounds	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Unlikely
Mercury(II) selenide	Mining waste; waste treatment	Unknown.	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Mining waste 2. Mercury capture waste procedures 3. Semiconductor	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Very Unlikely
Mercury(II) thiocyanate	Chemical manufacturing	6.4	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Analytical reagent 2. Photography (intensifier)	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Very Unlikely
Thimerosal	Chemical manufacturing	Unknown	Data for individual compounds not currently available	Data for individual compounds not currently available	1. Preservative	Data for individual compounds not currently available	Data for individual compounds not currently available	Data for individual compounds not currently available	Very Unlikely

\* Estimate based on discussions with Melissa Barbanell, Barrick Gold Corporation (personal communication June 18, 2009) and refers to mercury content only.

\* Estimate based on discussions with Melissa Barbanell, Barrick Gold Corporation (personal communication June 18, 2009) and refers to mercury content only.

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 9/28/2015 8:39:49 PM  
**To:** Jason (EPW) Albritton [Jason\_Albritton@epw.senate.gov]; Ryan Jackson [Ryan\_Jackson@inhouse.senate.gov]; Bettina Poirier (EPW) [Bettina\_Poirier@epw.senate.gov]; Dimitri Karakitsos (EPW) [Dimitri\_Karakitsos@epw.senate.gov]  
**Subject:** Fwd: TSCA TA  
**Attachments:** Option 3 -- TA\_9\_28\_15.docx; ATT00001.htm

All per earlier discussion, please see attached technical assistance.

Sent from my iPhone

Begin forwarded message:

**From:** "Schmit, Ryan" <[schmit.ryan@epa.gov](mailto:schmit.ryan@epa.gov)>  
**Date:** September 28, 2015 at 4:37:23 PM EDT  
**To:** "Vaught, Laura" <[Vaught.Laura@epa.gov](mailto:Vaught.Laura@epa.gov)>  
**Cc:** "Jones, Jim" <[Jones.Jim@epa.gov](mailto:Jones.Jim@epa.gov)>  
**Subject:** TSCA TA

With tracked changes.

**OPTION 3**

**SEC. 5. TESTING OF CHEMICAL SUBSTANCES OR MIXTURES.**

(a) In General.—Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amended—

...

~~-(5)(3)~~ by inserting before subsection (f) ~~(as so redesignated)~~ the following:

“(a) Development of New Information on Chemical Substances and Mixtures.—

...

“(4) CONTENTS.—

“(A) IN GENERAL.—A rule, testing consent agreement, or order issued under this subsection shall include—

“(i) identification of the chemical substance or mixture for which testing is required;

“(ii) identification of the persons required to conduct the testing;

“(iii) test protocols and methodologies for the development of information for the chemical substance or mixture, including specific reference to any reliable nonanimal test procedures; and

“(iv) specification of the period within which individuals and entities required to conduct the testing shall submit to the Administrator the information developed in accordance with the procedures described in clause (iii).

“(B) CONSIDERATIONS.—In determining the procedures and period to be required under subparagraph (A), the Administrator shall take into consideration—

“(i) the relative costs of the various test protocols and methodologies that may be required; ~~and~~

“(ii) the reasonably foreseeable availability of facilities and personnel required to perform the testing; ~~and~~

~~“(iii) the Administrator’s deadlines under subsection 6(a).;~~

**“SEC. 4A. PRIORITIZATION SCREENING.**

...

“(b) Prioritization Screening Process and Decisions.—

...

### OPTION 3

“(9) OTHER INFORMATION RELEVANT TO PRIORITIZATION.—

“(A) IN GENERAL.—If, after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a State proposes an administrative action or enacts a statute or takes an administrative action to prohibit or otherwise restrict the manufacturing, processing, distribution in commerce, or use of a chemical substance that the Administrator has not designated as a high-priority substance, the Governor or State agency with responsibility for implementing the statute or administrative action shall notify the Administrator.

“(B) REQUESTS FOR INFORMATION.—Following receipt of a notification provided under subparagraph (A), the Administrator may request any available information from the Governor or the State agency with respect to—

“(i) scientific evidence related to the hazards, exposures and risks of the chemical substance under the conditions of use which the statute or administrative action is intended to address;

“(ii) any State or local conditions which warranted the statute or administrative action;

“(iii) the statutory or administrative authority on which the action is based; and

“(iv) any other available information relevant to the prohibition or other restriction, including information on any alternatives considered and their hazards, exposures, and risks.

“(C) PRIORITIZATION SCREENING.—The Administrator shall conduct a prioritization screening under this subsection for all substances that—

“(i) are the subject of notifications received under subparagraph (A); and

“(ii) the Administrator determines—

“(I) are likely to have significant health or environmental impacts;

“(II) are likely to have significant impact on interstate commerce; or

“(III) have been subject to a prohibition or other restriction under a statute or administrative action in 2 or more States.

“(D) POST-PRIORITIZATION NOTICE.—If, after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a State proposes an administrative action or enacts a statute or takes an administrative action to prohibit or otherwise restrict the manufacturing, processing, distribution in commerce, or use of a high-priority substance, after the date on which the deadline established pursuant to section 6(a) for completion of the safety determination under section 6(a) expires but before the date on which the Administrator publishes the safety determination under section 6(a), the Governor or State agency with responsibility for implementing the statute or administrative action shall notify the Administrator.

“(E) AVAILABILITY TO PUBLIC.—Subject to section 14 and any applicable State law regarding the protection of confidential information provided to the State or to the

**Commented [A1]:** From 9(A), except flip the “has not designated” to “has designated”

**Commented [A2]:** Copied from 18(b)(1).

**Commented [A3]:** Presume drafters do not intend for this notice obligation to extend beyond the date that the safety determination is published, since under prior drafting there would have been no need for the state to apply for a waiver during the period between the issuance of a negative safety determination and the effective date of a risk management rule under 6(d).

### OPTION 3

Administrator, the Administrator shall make information received from a Governor or State agency under subparagraph (A) ~~or (D)~~ publicly available.

~~“(E)”~~ EFFECT OF PARAGRAPH.—Nothing in this paragraph shall preempt a State statute or administrative action, require approval of a State statute or administrative action, or apply section 15 to a State.

**Commented [A4]:** Presume drafters would intend both of these provisions to apply to 4(b)(9)(D) notices, just like 4(b)(9)(A) notices.

## “SEC. 6. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.”;

(2) by redesignating subsections (e) and (f) as subsections ~~(g)~~**(h)** and ~~(h)~~**(i)**, respectively;

(3) by striking subsections (a) through (d) and inserting the following:

“(a) In General.—The Administrator—

“(1) shall conduct a safety assessment and make a safety determination of each high-priority substance in accordance with subsections (b) and (c);

“(2) shall, as soon as practicable and not later than 6 months after the date on which a chemical substance is designated as a high-priority substance, define and publish the scope of the safety assessment and safety determination to be conducted pursuant to this section, including the hazards, exposures, conditions of use, and potentially exposed or susceptible populations that the Administrator expects to consider;

“(3) as appropriate based on the results of a safety determination, shall establish restrictions pursuant to subsection (d);

“(4) shall complete **and publish** a safety assessment and safety determination not later than 3 years and 6 months after the date on which a chemical substance is designated as a high-priority substance;

“(5) shall promulgate **a any necessary** final rule pursuant to subsection (d) by not later than 2 years after the date on which the safety determination is completed;

“(6) may extend the deadline under paragraph (4) for no more than 180 days, if ~~is~~ ~~test~~ ~~information relating to the high priority substance, required to be developed in a rule,~~ order or consent agreement promulgated or issued under Section 4:

(i) ~~is in effect~~ ~~has not yet been submitted to the Administrator;~~ or

(ii) was submitted to the Administrator:

(I) ~~timely, as was specified in the rule, order, or consent agreement pursuant to section 4(a)(4)(A)(iv); and~~

~~(II) on or after the date that is 120 days before the expiration of the deadline under paragraph (4); and~~

“(7) may extend the deadline under paragraph (5) for no more than 2 years, subject to the

**Commented [A5]:** This language is derives from 4(a)(1): “The Administrator may require the development of new information relating to a chemical substance or mixture in accordance with this section”

Also clarifies that the unmet information requirement must be about the same high priority substance for which the deadline is being extended.

**Commented [A6]:** These words are unnecessary, and incomplete, since consent agreements are “entered into,” per 4(a)(3).

It would also be clear, but wordier, to say “promulgated, issued, or entered into under Section 4”

**Commented [A7]:** Narrowed per drafting directions. Note that rules, orders, and consent agreements have legal consequences that extend beyond the date that the information is submitted, and thus could be said to still be “in effect.” See 4(d)(2)(B)(iii)(I).

**Commented [A8]:** “timely” means on time as defined by the rule/order/agreement, as explained earlier in the bill at 4(a)(4)(A)(iv).

**Commented [A9]:** In order to justify an extension, submission must be both timely and close to the safety determination deadline.

### OPTION 3

condition that the aggregate length of all extensions of deadlines under this subsection does not exceed 2 years.

## SEC. 17. STATE-FEDERAL RELATIONSHIP.

“(b) New Statutes or Administrative Actions Creating Prohibitions or Other Restrictions.—

“(1) IN GENERAL.—Except as provided in subsections (c), (d), ~~and (e)~~, **(f), and (g)**, beginning on the date on which the Administrator defines **and publishes** the scope of a safety assessment and safety determination under section 6(a)(2) and ending on the date on which the deadline established pursuant to section 6(a) for completion of the safety determination expires, or on the date on which the Administrator publishes the safety determination **under section 6(a)**, whichever is earlier, no State or political subdivision of a State may establish a statute or administrative action prohibiting or restricting the manufacture, processing, distribution in commerce or use of a chemical substance that is a high-priority substance designated under section 4A.

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 6/23/2015 10:55:16 PM  
**To:** Repko, Mary Frances [Mary.Frances.Repko@mail.house.gov]; Bauserman, Trent [Trenton\_D\_Bauserman@ceq.eop.gov]  
**Subject:** RE: TSCA Suspension Update

Thanks!

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**From:** Repko, Mary Frances [mailto:Mary.Frances.Repko@mail.house.gov]  
**Sent:** Tuesday, June 23, 2015 6:38 PM  
**To:** Bauserman, Trent; Vaught, Laura  
**Subject:** FW: TSCA Suspension Update  
**Importance:** High

Just flagging that the colloquy that the Center for Environmental Health in CA wanted is now in the Record. CEH is now retracting the oppose email they sent earlier in the day. Pelosi and Eshoo had Lofgren send the retraction again to the whole delegation just in case emails got stuck. Vote is happening now (in this series).

Colloquy between Ms. ESHOO and Mr. SHIMKUS on H.R. 2576

Ms. ESHOO: Mr. Speaker, I rise today for the purpose of engaging Chairman Shimkus in colloquy. First, I would like to thank Mr. Shimkus for working with me during and after markup to make sure that the important role of states in chemical regulation is preserved. In the absence of a strong federal chemical regulatory program, many states have taken action to protect their citizens from toxic chemicals. Strong laws are in place in many states to address chemicals including BPA, flame retardants, and more. Through the Committee process, explicit protections have been added for state laws and state common laws, including important changes taken from the amendment that I offered at markup. My amendment was drafted in response to the letter sent by 12 State Attorneys General, which I would like to introduce now into the record. Again, I appreciate you working with me to address the points they raised. It is my understanding that nothing in this bill would preempt or otherwise affect existing state laws or private rights of action, unless there is an actual conflict between a federal requirement and a state requirement. Is that correct?

Mr. SHIMKUS: Yes it is. H.R. 2576 contains protection for existing state laws and existing citizen enforcement actions. No existing state requirements will be preempted unless they actually conflict with federal requirements.

Ms. ESHOO: As you know, over twenty-five years ago, the people of California enacted a landmark ballot measure known as Proposition 65. Proposition 65 requires persons who expose individuals to certain chemicals that are known to cause cancer or reproductive harm to display a clear and reasonable warning. Proposition 65 enforcement actions by the state and by private parties have played a crucial role in reducing childhood exposure to harmful chemicals. This state law operates somewhat differently from other state laws related to chemicals, so I want to ask specifically about the protection for Proposition 65 in the bill. It is my understanding that nothing in this bill would preempt or otherwise impact enforcement of Proposition 65 or the ability of the State to continue to authorize citizen enforcement of Proposition 65, unless there is an actual conflict. Is that correct?

Mr. SHIMKUS: That is correct. We do not intend to interfere with operation of Proposition 65 unless a requirement under that law actually conflicts with a federal requirement under TSCA.

Ms. ESHOO: And just to be clear, the waiver provision in Section 18(b) of current law, which could protect additional state laws, is not changed by this bill?

Mr. SHIMKUS: That is correct.

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**From:** DeGraff, Kenneth  
**Sent:** Tuesday, June 23, 2015 6:26 PM  
**To:** Price, Reva; Beck, Paul; Cohen, Jacqueline; Repko, Mary Frances  
**Subject:** FW: Urgent from Leader Pelosi and Rep. Eshoo: CA Impact of Suspension Bill  
**Importance:** High

This went out to Cali Dem chiefs and LDs a few mins ago. Nothing new, but FYI

==  
Kenneth DeGraff  
Policy Advisor | Democratic Leader Nancy Pelosi  
[www.DemocraticLeader.gov](http://www.DemocraticLeader.gov)  
☎ 202-225-0100 ✉ [kenneth.degraff@mail.house.gov](mailto:kenneth.degraff@mail.house.gov) 🏠 H-204, The Capitol, Washington DC 20515  
[Twitter](#) | [Facebook](#) | [Youtube](#) | [Instagram](#) | [Flickr](#) | [Tumblr](#)

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**From:** Radosevich, Martin  
**Sent:** Tuesday, June 23, 2015 6:22 PM  
**Subject:** Urgent from Leader Pelosi and Rep. Eshoo: CA Impact of Suspension Bill  
**Importance:** High

CA Dem CoS and LDs:

Leader Pelosi's office asked that I forward the email below to Delegation Staff. If you have questions please contact [Kenneth.DeGraff@mail.house.gov](mailto:Kenneth.DeGraff@mail.house.gov) with Leader Pelosi or [Paul.Beck@mail.house.gov](mailto:Paul.Beck@mail.house.gov) with Rep. Eshoo.

Thank you,

Martin

**Martin Radosevich**  
Senior Policy Advisor  
Rep. Zoe Lofgren, Chair CA Democratic Delegation  
office: (202) 225-3072

You or your staff might have received an email this afternoon from the Sheridan Group representing the Center for Environmental Health. We wanted to make sure the appropriate person on your staff sees their follow-up response below.

If you have any questions please contact Kenneth DeGraff with Leader Pelosi or Paul Beck with Rep. Eshoo.

:

**From:** "Carly Katz" <[CKatz@sheridangroupdc.com](mailto:CKatz@sheridangroupdc.com)>  
**Date:** June 23, 2015 at 6:06:17 PM EDT  
**To:**  
**Cc:** "[kenneth.degraff@mail.house.gov](mailto:kenneth.degraff@mail.house.gov)" <[kenneth.degraff@mail.house.gov](mailto:kenneth.degraff@mail.house.gov)>, "Beck, Paul" <[Paul.Beck@mail.house.gov](mailto:Paul.Beck@mail.house.gov)>, "Mary.Frances.Repko@mail.house.gov" <[Mary.Frances.Repko@mail.house.gov](mailto:Mary.Frances.Repko@mail.house.gov)>  
**Subject:** RE: Urgent: CA Impact of Suspension Bill

Hi ,

Thanks for your attention to this issue. We are pleased to report that leadership has negotiated a colloquy that establishes that it is the intent of the House of Representatives that civil litigation under California's Prop 65 is preserved in H.R. 2576, the TSCA Modernization Act. Thank you for your attention to this issue and commitment to preserving Prop 65. Please let me know if you have any questions.

Carly

---

**From:** Carly Katz  
**Sent:** Tuesday, June 23, 2015 3:47 PM  
**To:**  
**Subject:** Urgent: CA Impact of Suspension Bill

Hi ,

I work with the California-based Center for Environmental Health, and I'm writing to flag for you an urgent, California-related problem with a suspension bill on the floor today: the Toxic Substances Control Act (TSCA).

In short, the bill was changed after it passed out of committee and could pose a threat to California's critical, landmark law to protect consumers from toxic chemicals: Proposition 65.

Prop 65 is an incredibly important law to the entire country. When companies change the formulation of their products in CA to comply with Prop 65, they often extend that change to the products sold in the rest of the country.

The most important way Prop 65 is enforced is by private right of action. In other words, a citizen or organization can bring a suit against a company for a toxic chemical it's using. Then, the CA attorney general may take up the case. The overwhelming majority of Prop 65 cases taken up by the AG's office are first brought by private citizens.

**As the bill currently stands, there is a strong risk that chemical companies could argue that its language does not allow private right of action. This would effectively gut Prop 65 and leave children in families in California and across the country at risk from toxic chemicals.**

We are working on a colloquy between committee leadership to clarify that the intent of the provision is to preserve private right of action. If this does not happen, you may receive an urgent email from us before the vote this evening.

Please let me know if you have any questions.

Many thanks,

Carly

**Carly Katz**  
Senior Policy Associate  
The Sheridan Group

T: 202.628.7770

M: 757.572.4573

[ckatz@sheridangroupdc.com](mailto:ckatz@sheridangroupdc.com)



Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 6/9/2015 8:09:06 PM  
**To:** Cohen, Jacqueline [jackie.cohen@mail.house.gov]  
**Subject:** RE: July 8th hearing

Thanks. I think Jim is supposed to be on family vacation that week though...

---

**From:** Cohen, Jacqueline [mailto:jackie.cohen@mail.house.gov]  
**Sent:** Tuesday, June 09, 2015 3:36 PM  
**To:** Vaught, Laura  
**Subject:** July 8th hearing

It is looking like July 8<sup>th</sup> for the TSCA Section 8 hearing.

Jacqueline G. Cohen  
Senior Counsel  
Committee on Energy and Commerce, Democratic Staff  
U.S. House of Representatives  
[jackie.cohen@mail.house.gov](mailto:jackie.cohen@mail.house.gov)  
202-225-4407

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 4/3/2015 8:01:41 PM  
**To:** McCarthy, David [David.McCarthy@mail.house.gov]  
**CC:** Cohen, Jacqueline [jackie.cohen@mail.house.gov]  
**Subject:** RE: TSCA fixes

Got it -- thanks! Hope you both have a good weekend.

---

**From:** McCarthy, David [mailto:David.McCarthy@mail.house.gov]  
**Sent:** Friday, April 03, 2015 4:00 PM  
**To:** Vaught, Laura  
**Cc:** Cohen, Jacqueline  
**Subject:** Fw: TSCA fixes

Laura - here's our draft so far. Bracketed items are either ones Jackie and I are still working on, or tweaks Leg Counsel raised today which Jackie's not had a chance to respond on. Try my cell if you have any questions.

Ex. 6 - Personal Privacy Thanks. And thanks, Jackie. Dave

---

**From:** Lin, Kakuti <Kakuti.Lin@mail.house.gov>  
**Sent:** Friday, April 3, 2015 1:26 PM  
**To:** McCarthy, David  
**Cc:** Brown, Tim D  
**Subject:** RE: TSCA fixes

Hi Dave,  
Here's a revised draft, based on our conversations.  
The bracketed language on page 12, lines 16-17, seems superfluous. Can we strike it?  
I left a couple of other questions in the draft; let me know if you'd like me to pull them out.  
Best,  
-k/Tim

---

**From:** McCarthy, David  
**Sent:** Thursday, April 02, 2015 4:42 PM  
**To:** Brown, Tim D; Lin, Kakuti  
**Cc:** Cohen, Jacqueline  
**Subject:** FW: TSCA fixes

Tim and Kakuti,

Here some additional answers and changes>

First, please do include in the draft conforming changes (e.g., adding "rules, orders, etc. where needed) but not other technical changes to underlying law (e.g., do not include repeal of studies or changing HEW to HHS). We will also not have changes to section 5.

Bill changes:

**In the definition** of potentially exposed subpopulation we want to strike "who are at greater risk" and insert "who, due to either greater susceptibility or greater exposure, are at greater risk"

**In Sec. 6(b)(3)(B)** strike “analyze” and insert “take into account, where relevant,”

In 6(b)(3) where you have “not including cost and other non-risk factors” insert “not including cost and other factors not directly related to human health or the environment” .

Strike TSCA s sec. 6(c) (1)(D) and insert “(D) shall exempt replacement parts for articles manufactured prior to promulgation of the rule unless the Administrator finds such replacement parts contribute significantly to the identified risk.”

Strike subsection (c)(1)(E) and insert “(E) In selecting among options to address identified risk select options or restrictions on articles only to the extend needed to mitigate the identified risk.”

#### **TSCA section 9(b)**

Please include the whole section from the March 20 draft but place brackets at the beginning and end

**In section 14 language** you have, but which is not in our draft,

In subsection (a) replace what I sent you with

“(5) may be disclosed to a state, local, or tribal government official upon request of the government official for the purpose of administration or enforcement of a law; and

(6) shall be disclosed to a health or environmental professional employed by a Federal or State agency in response to an environmental release; or to a treating physician or other health care professional to assist in the diagnosis or treatment of 1 or more individuals.”

In subsection (c)(1) new language change “claiming” to “designating” and “claim” to “designation”

#### **Pre-emption TSCA section 18**

In the language you sent us please delete “or mixtures” wherever it appears and leave the brackets surrounding (B), but delete the brackets surrounding (C) and leave (C) in.

Also add “Nothing in this Title shall be construed to affect either the tort law or the law governing the interpretation of contracts of any State.

#### **To add new language on Fees, In old TSCA sec. 26 (b):**

insert “just and” before “reasonable” ;

strike “4 or 5” and insert “4,5, or 6(b)(2)(B)”; and

strike “such rule shall not provide for any fee in excess of \$2,500 or, in the case of a small business concern, any fee in excess of \$100.” and insert “such rule shall provide lower fees for small business concerns.”

Then add (where appropriate to section 26

“( ) Public Notice and Comment for Fees Related to Section 6(b)(2)(B) - the Administrator shall, subject to notice and comment, issue guidance regarding how the Administrator will evaluate, devise, and assess fees on manufacturers requesting a risk evaluation under section 6(b)(2)(B). the Administrator shall take notice and comment on any major modifications to such guidance.”

In new TSCA section 26(j) strike “and all information submitted or issued under this Act”

Thanks so much. And thanks, Jackie. Dave

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 3/17/2015 11:23:45 AM  
**To:** Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]; Michal Freedhoff [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** Fwd: Multi-State AG letter  
**Attachments:** 2015-03-16 letter (six ags) epw leaders tsca.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Freedhoff, Michal (Markey)" <Michal\_Freedhoff@markey.senate.gov>  
**Date:** March 17, 2015 at 6:27:36 AM EDT  
**To:** "Vaught, Laura" <Vaught.Laura@epa.gov>  
**Cc:** "Poirier, Bettina (EPW)" <Bettina\_Poirier@epw.senate.gov>  
**Subject:** Multi-State AG letter

Hi Laura

Could we very quickly touch base this morning? My direct is Personal Phone / Ex. 6

Thanks  
Michal

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 1/9/2015 9:46:45 PM  
**To:** Karakitsos, Dimitri (EPW) [Dimitri\_Karakitsos@epw.senate.gov]  
**Subject:** RE: SEPW TA Request on TSCA Reform

Got it -- thanks.

---

**From:** Karakitsos, Dimitri (EPW) [mailto:Dimitri\_Karakitsos@epw.senate.gov]  
**Sent:** Friday, January 09, 2015 4:43 PM  
**To:** Vaught, Laura  
**Subject:** FW: SEPW TA Request on TSCA Reform

Laura,

Attached is the TA we received which I mentioned earlier. Would love to get to the bottom line on this paragraph as soon as possible. Please let me know if you want to discuss or have any questions.

Thanks,

Dimitri

---

**From:** Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]  
**Sent:** Wednesday, December 10, 2014 3:51 PM  
**To:** Karakitsos, Dimitri (EPW)  
**Subject:** RE: SEPW TA Request on TSCA Reform

Dimitri,

Below is the requested technical assistance on the additional language. The technical assistance on the larger, separate package should be ready to send to you and the others by the end of the week. The technical assistance does not necessarily represent the policy positions of the agency or the administration on the bill and the draft language. Please let me know if any additional questions. Thanks,  
Sven

Nothing in this section shall be construed as requiring the Administrator to modify or withdraw; any rule or order under section 5 or 6 of this Act, or as modifying the effect of this section as enacted prior to the effective date of the Chemical Safety Improvement Act with respect to any substance for which ~~on~~ any rule or order has been promulgated or issued under section 5 or 6 of this Act prior to the effective date of the Chemical Safety Improvement Act.

1. Regarding the first part of this paragraph: "Nothing in this section shall be construed as requiring the Administrator to modify or withdraw, any rule or order under section 5 or 6 of this Act,"
  - a. the preservation of existing EPA regulations and orders is an issue that doesn't have anything to do with state preemption and it should therefore be addressed elsewhere in the bill. It needn't actually appear as a codified amendment to TSCA. It could simply be a provision of CSIA.
  - b. Also, if only rules and orders under section 5 and 6 are preserved, is the intent that enactment of CSIA would oblige EPA to modify and/or withdraw current EPA rules and orders issued under other sections of current TSCA?

2. Regarding the revisions to the latter half of this paragraph: “[Nothing shall be construed as] modifying the effect of this section as enacted prior to the effective date of the Chemical Safety Improvement Act with respect to any substance for which any rule or order has been promulgated or issued under section 5 or 6 of this Act prior to the effective date of the Chemical Safety Improvement Act.”
- a. These revisions to § 18(c)(3) would create a bifurcated preemption scheme, in which both pre-CSIA section 18 and post-CSIA section 18 remain effective law.
  - b. Pre-CSIA section 18 would continue to apply indefinitely, even though it will be deleted from the current U.S. Code, with respect to a major category of chemicals (e.g., all those for which 5(e) orders or SNURs have been issued pre-CSIA).
  - c. For example, with respect to a SNUR’d chemical: Even if EPA subsequently determined the chemical was safe, or issued a 6(d) rule, CSIA preemption would never apply to such a chemical substance. Was that the intent?

Sven-Erik Kaiser  
U.S. EPA  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Karakitsos, Dimitri (EPW) [[mailto:Dimitri\\_Karakitsos@epw.senate.gov](mailto:Dimitri_Karakitsos@epw.senate.gov)]  
**Sent:** Wednesday, December 10, 2014 9:48 AM  
**To:** Kaiser, Sven-Erik  
**Subject:** Re: SEPW TA Request on TSCA Reform

Morning Sven - just wanted to follow up on this and see if there are any thoughts or suggestions or major issues? I have a meeting with some folks in a bit and I know they are going to ask so I just wanted to check on the status of this and the larger request if you can share any updates.

Thanks,

Dimitri

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**From:** Karakitsos, Dimitri (EPW)  
**Sent:** Thursday, December 04, 2014 04:03 PM  
**To:** Kaiser, Sven-Erik <[Kaiser.Sven-Erik@epa.gov](mailto:Kaiser.Sven-Erik@epa.gov)>  
**Subject:** RE: SEPW TA Request on TSCA Reform

Yes it is separate, it can go to both of us or just me, either way we will be discussing at some point. Just a longstanding issue that we need to do some homework on. Thanks again

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**From:** Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]  
**Sent:** Thursday, December 04, 2014 3:58 PM  
**To:** Karakitsos, Dimitri (EPW)  
**Subject:** SEPW TA Request on TSCA Reform

Dimitri,  
Thanks for the additional language. Is this separate from the language that Jonathan sent over? Does the response go only to you? Best,  
Sven

Sven-Erik Kaiser  
U.S. EPA

Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave., NW (1305A)  
Washington, DC 20460  
202-566-2753

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**From:** Karakitsos, Dimitri (EPW) [[mailto:Dimitri\\_Karakitsos@epw.senate.gov](mailto:Dimitri_Karakitsos@epw.senate.gov)]  
**Sent:** Thursday, December 04, 2014 3:55 PM  
**To:** Kaiser, Sven-Erik  
**Subject:** Extra TA

Sven,

Appreciate your help, wanted to share an additional small section of language if you all could please review and let me know if you have any thoughts/issues? It would tweak language currently in the preemption section of the bill. Thanks very much in advance.

Nothing in this section shall be construed as requiring the Administrator to modify or withdraw; any rule or order under section 5 or 6 of this Act, or as modifying the effect of this section as enacted prior to the effective date of the Chemical Safety Improvement Act with respect to any substance for which ~~on~~ any rule or order has been promulgated or issued under section 5 or 6 of this Act prior to the effective date of the Chemical Safety Improvement Act.

**Dimitri J. Karakitsos**  
Republican Senior Counsel  
Senate Committee on  
Environment and Public Works  
(202) 224-6176

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 10/14/2015 12:03:15 AM  
**To:** Jason (EPW) Albritton [Jason\_Albritton@epw.senate.gov]; Bettina Poirier (EPW) [Bettina\_Poirier@epw.senate.gov]  
**Subject:** Fwd: TA on Inadvertent Generation of PCBs, v6.docx  
**Attachments:** TA on Inadvertent Generation of PCBs, v6.docx; ATT00001.htm

This has both legal and impacts. You may end up getting twice (also from Sven) but sending on the theory that having it twice is better than not at all.

Sent from my iPhone

Begin forwarded message:

**From:** "Schmit, Ryan" <[schmit.ryan@epa.gov](mailto:schmit.ryan@epa.gov)>  
**Date:** October 13, 2015 at 7:59:08 PM EDT  
**To:** "Vaught, Laura" <[Vaught.Laura@epa.gov](mailto:Vaught.Laura@epa.gov)>  
**Cc:** "Jones, Jim" <[Jones.Jim@epa.gov](mailto:Jones.Jim@epa.gov)>  
**Subject:** TA on Inadvertent Generation of PCBs, v6.docx

### Legal Overview

- We understand that the intent of the language is to void any existing EPA rules that allow the manufacture, processing, distribution in commerce or use of inadvertently generated PCBs after a specified date, but to give EPA authority to allow such manufacture, processing, distribution in commerce or use by a new rule or rules to the extent EPA finds that the activities do not present an unreasonable risk. If so, we recommend revised drafting. Specifically, we recommend leaving section 6(e)(2) unchanged, and adding a new section 6(e)(4) (with renumbering of the ensuing paragraphs), as follows:

(4) After January 1, 201X, no person may manufacture, process, distribute in commerce or use inadvertently generated polychlorinated biphenyls above 1 part per billion previously excluded from the prohibitions in sections 6(e)(2) and 6(e)(3) by the Administrator by rule. The Administrator may, by rule, exclude such manufacture, processing, distribution in commerce or use from the prohibitions in the preceding sentence if the Administrator finds that such manufacture, processing, distribution in commerce or use will not present an unreasonable risk of injury to health or the environment.

- We recommend these drafting changes for several reasons. First, the regulatory allowances EPA has made for inadvertently generated PCBs were termed “exclusions”, not “authorization” under section 6(e)(2), so the term “authorized” in the language you provided will not reliably effectuate your intent as we understand it. For related reasons, adding the changes you suggest to section 6(e)(2) will create confusion about the operation of 6(e)(2) and 6(e)(3). The effect of these two paragraphs is keyed to certain dates following the enactment of TSCA in order to effectuate Congress’ intent to have increasingly stringent bans in the years immediately following enactment; the addition of new language with a more recent date and an imprecise use of the term “authorize” could have unintended consequences.

### Impact of 1 ppb Limit

- Many chemical manufacturing processes inadvertently generate PCBs as unintended byproducts. Due to the simple structure of the PCB molecule (2 linked benzene rings plus chlorine), these potentially include almost any chemical process that involves hydrocarbons, chlorine, and heat. Typical processes include production of chlorinated solvents, paints, printing inks, agricultural chemicals, plastics, and detergent bars.
- The impact of a 1 ppb limit could be far reaching as inadvertently generated PCBs can be found in a wide range of consumer products at measureable levels. Common products that could be affected by the 1 ppb limit include:
  - Color newsprint, magazines, books, office supplies (folders, dividers), and packages and containers
  - Paint pigments
  - Spray paints
  - Printer inks

- The Color Pigment Manufacturer's Association, representing small, medium, and large color pigments manufacturers throughout Canada, Mexico and the United States, commented to EPA that lowering the limit on inadvertently generated PCBs in products to 1 or 2 parts per *million* would effectively ban many common commercial pigments used in printing.
- Another impact may include paper recycling -- recycled newspapers are printed with inks that contain allowable PCBs but lower limits will potentially impact newspaper recycling facilities.
- In the 1980s, when the current inadvertently-generated PCB regulations were developed under TSCA, EPA developed a list of approximately 200 chemical processes with a potential to inadvertently generate PCBs. At that time, the 200 chemical processes were of major importance to the organic chemical industry, such as processes that produced high volume chlorinated solvents. EPA has further documentation following its 1984 rulemaking that determined 70 of those processes were likely to inadvertently generate PCBs (no further follow up has occurred since the 1980s rulemaking concluded).
- Some of the chemical processes affected by the 1 ppb limit include:
  - Aluminum Chloride
  - Chlorinated Benzenes
  - Chloroform
  - Methyl Chloride
  - Chlorinated Pesticides
  - Chlorinated Pigments/Dyes
  - Linear Alkyl Benzenes
  - Phosgene
  - Propylene Oxide
- In addition, a 1 ppb limit would subject inadvertently generated PCBs to much more stringent regulation than Aroclor mixtures (ubiquitous and toxic commercial mixtures of PCBs) which are generally regulated at 50 ppm for use and disposal. Certain uses are regulated down to 2 ppm, which is also the level for unrestricted use of many decontaminated materials under TSCA. Aroclor mixtures are known to be probable carcinogens and contain dioxin-like PCB congeners, while the risk of inadvertently generated PCBs has not been established.
- Finally, much of the world has adopted the 50 ppm PCB concentration level first established by the U.S. under TSCA for many applications. Many imported chemicals and articles, including commercial products, would inevitably violate a 1 ppb ban on inadvertently-generated PCBs under TSCA.
- To issue new use authorizations under this proposed amendments the Agency will need to develop new risk assessments that support a finding of no unreasonable risk. The current state of the science has been more focused on Aroclor mixtures rather than individual PCBs. To fully characterize risk, toxicity and exposure information for dozens of individual PCB congeners (possibly all 209 individual PCB molecules) may need to be assessed.

#### Regulatory Background

- Processes that create inadvertently generated PCBs are defined as Excluded Manufacturing Processes, and the products that result are not prohibited as long as the concentrations do not

exceed specified limits and the manufacturer/importer complies with reporting and recordkeeping requirements.

- Concentrations are limited to less than 25 ppm total PCBs concentration (annual average) with a maximum concentration of 50 ppm after applying a “discount factor” to the concentration of less chlorinated molecules.
- The quantifiable level of detection is set in regulations at 2 ppm.
- Manufacturers and importers must notify EPA if a product has a PCB concentration greater than 2 ppm. Notification may be based on theoretical assumptions; TSCA does not require product testing. In the last twenty years, approximately 80 notices from 28 companies have been filed and are contained in a public docket.

Message

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**From:** Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]  
**Sent:** 10/2/2015 7:41:44 PM  
**To:** Freedhoff, Michal (Markey) [Michal\_Freedhoff@markey.senate.gov]  
**Subject:** RE: Udall, Markey, Durbin Announce Agreement on Chemical Safety Reform Bill

Thanks!

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**From:** Freedhoff, Michal (Markey) [mailto:Michal\_Freedhoff@markey.senate.gov]  
**Sent:** Friday, October 02, 2015 3:32 PM  
**To:** Vaught, Laura  
**Subject:** Fw: Udall, Markey, Durbin Announce Agreement on Chemical Safety Reform Bill

Fyi

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Barry, Giselle (Markey) <Giselle\_Barry@markey.senate.gov>  
**Sent:** Friday, October 2, 2015 11:07 AM  
**To:** Freedhoff, Michal (Markey)  
**Subject:** FW: Udall, Markey, Durbin Announce Agreement on Chemical Safety Reform Bill

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**From:** Tom Udall Press Office <NEWS\_PressOffice@tomudall.senate.gov>  
**Date:** Friday, October 2, 2015 at 10:57 AM  
**To:** Tom Udall Press Office <NEWS\_PressOffice@tomudall.senate.gov>  
**Subject:** Udall, Markey, Durbin Announce Agreement on Chemical Safety Reform Bill



NEWS FROM  
**The United States Senate**

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FOR IMMEDIATE RELEASE: October 2, 2015

**Udall, Markey, Durbin Announce Agreement on Chemical Safety Reform Bill**  
***Markey, Durbin to cosponsor after Senate vote, bringing total support to 60 senators***

WASHINGTON — Today, as the full Senate prepares to begin debate on a historic bill to overhaul the broken Toxic Substances Control Act of 1976, U.S. Sens. Tom Udall (D-N.M.), Edward J. Markey (D-Mass.) and Richard Durbin (D-Ill.) announced they have agreed on new improvements to the bill. With the changes, Markey and Durbin have agreed to support the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which Udall wrote with U.S. Sen. David Vitter (R-La.). Their cosponsorship brings the total number of cosponsors for the bipartisan bill to 60 senators representing 38 states. Debate is expected to begin as soon as next week.

Named for the late New Jersey Sen. Frank Lautenberg, a champion for public health and the environment, the Lautenberg bill would be the first significant reform of TSCA since it was passed 39 years ago. It would — for the

first time — give the Environmental Protection Agency (EPA) the authority to test and regulate chemicals according to their impact on the most vulnerable among us: children, pregnant women, the elderly and chemical workers. Markey and Durbin worked with Udall and Vitter on changes to the bill that will be added in a substitute amendment when the bill is brought up on the floor. The changes include provisions to increase funding for EPA resources through industry fees, ensure fast industry compliance with EPA regulations, and simplify the waiver process from preemption for states. The agreement also expedites action on work that EPA pursues on chemicals that are known dangers, such as asbestos.

"I'm extremely pleased to announce that Senators Markey and Durbin will support our efforts to reform the nation's broken chemical safety laws," **Udall said**. "This bill is the product of years of work, collaboration and positive input from lawmakers across the country who understand that we need a national solution to our broken chemical safety law — one that will ensure Americans in New Mexico or Illinois or Massachusetts have the same protections as those in all 50 states. The law has been broken for far too long, and as we prepare to begin debate on the Senate floor, I encourage all lawmakers to act to protect families, young children, and pregnant women from dangerous chemicals and support this bill."

"I am pleased by the positive and meaningful progress on improvements to TSCA reauthorization legislation, and I am proud we have secured changes to the bill that will ensure chemical companies comply with mandatory deadlines for safety regulations, expedite regulatory action on the most dangerous chemicals, allow states more flexibility to implement new chemical regulations and give EPA the funds it needs to do the job," **said Senator Markey, Ranking Member of the Superfund, Waste Management and Regulatory Oversight subcommittee**. "Our federal chemical law is outdated and ineffective, and this legislation is a much-needed update that will help protect families and communities from dangerous chemicals. I thank Senator Durbin for his partnership, and Senators Udall, Vitter and Inhofe for their leadership and collegial efforts to work with us to strengthen the legislation."

"Following a Chicago Tribune series in 2012 that revealed that flame retardant chemicals added to furniture and other household goods are useless and toxic for American families, I began calling for reform of the antiquated law regulating toxic chemicals," **said Durbin**. "Today's agreement reflects a bipartisan effort to give the EPA additional resources and authority to more effectively regulate chemicals and ensure timely compliance with new laws. Further delay in reforming this broken system risks exposing more families to toxic substances and leaves the EPA with little recourse against the aggressive chemical companies that have been exploiting the lack of oversight."

Lautenberg dedicated years to crafting a bill that would finally fix TSCA. In 2012, shortly before he passed away, Lautenberg and Vitter announced a bipartisan agreement. After Lautenberg's death, Udall took up Lautenberg's efforts and strengthened the bill. Their legislation would require EPA to consider only the health and safety impacts of a chemical - never the cost or burden to manufacturers - when assessing chemicals for safety. It ensures consideration of those most vulnerable from chemicals - defined in the bill as pregnant women, infants, the elderly and chemical workers. It sets a new fee so chemical companies will bear a larger share of the cost of evaluating and regulating chemicals. And it provides certainty in the law about when states may step in if EPA does not act to regulate or ban dangerous chemicals.

#### **Details of the agreement with Markey and Durbin:**

- Increases the \$18 million per year funding cap for industry TSCA Fees to \$25 million per year, and creates a process to ensure sufficient resources to defray 25 percent of EPA's chemical safety program costs
- Sets a mandatory compliance deadline of four years for industry compliance with EPA regulations (and allows an extension of up to 18 months if EPA determines that the deadline is technologically or economically infeasible)
- Clarifies and simplifies the process for state waivers from preemption and state co-enforcement of federal chemical safety regulations
- Expedites regulatory action on EPA's TSCA Work Plan chemicals (the 90 chemicals EPA has identified as having the highest potential for exposure and hazard) from the seven years the bill currently allows to generally five years for these chemicals.
- Adds assurances for mandatory protections for vulnerable populations, such as pregnant women, children and workers
- Includes other improvements to the bill's provisions to ensure: exposure to PBTs is reduced as much as practicable;

parity for judicial review of EPA actions;  
EPA has to disclose the information it used to make prioritization decisions; and  
improvements to provisions allowing access to CBI for medical professionals and first responders.

###

**Contacts:** Jennifer Talhelm (Udall) 202.228.6870 / Giselle Barry (Markey) 202.224.2742 / Christina Mulka (Durbin)  
202.228.5643